STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORBERT McHUGH, LOUIS HUTZLER, DARREL MOLZAHN, ANN McHUGH, and GREEN BAY EMPLOYEES, LOCAL 1672-B, AFSCME, AFL-CIO, Complainants, -versus- BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY ET AL, GREEN BAY, WISCONSIN, and EDWIN OLDS, SUPERINTENDENT, Respondents.	Case VI No. 12944 MP-63 Decision No. 9095-B
BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY ET AL, GREEN BAY, WISCONSIN, and EDWIN OLDS, SUPERINTENDENT, Complainants, -versus- NORBERT McHUGH, LOUIS HUTZLER, DARREL MOLZAHN, ANN McHUGH, and GREEN BAY EMPLOYEES, LOCAL 1672-B, AFSCME, AFL-CIO, Respondents.	Case VII No. 13098 MP-70 Decision No. 9095-B

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson, for the Complainants (and Respondents in Case VII - No. 13098 - MP-70)

Mr. Ervin L. Doepke, City Attorney for City of Green Bay, for the Respondents (and Complainants in Case VII - No. 13098 - MP-70)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed on June 5, 1969 with the Wisconsin Employment Relations Commission in the above entitled matter and on June 18, 1969 the Commission having appointed Robert M. McCormick, a member of the Commission's staff, to act as examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and on June 19, 1969 the Board of Education Joint School District No. 1, City of Green Bay et al, having filed an answer to the original complaint filed by the above named Complainants, wherein said Respondents alleged that the above named Complainants had caused to be circulated, or were responsible for the distribution of a "black list" all in violation of Section 111.70(2) and (3) (b) 1. and 2. of the Wisconsin Statutes, said allegations having been pleaded in the form of an affirmative defense which was treated as a

counterclaim of the Respondents; that on June 9, 1969, prior to the appointment of its examiner, the Commission noticed the matter for hearing for City Hall, Green Bay, Wisconsin, scheduling same for June 25, 1969; that prior to said date and on June 18, 1969, the Exami postponed hearing to July 16, 1969; that prior to the date for hearing Counsel for the Respondents having filed a written request with the Examiner for subpoenas duces tecum for use in a deposition proceeding, pursuant to Sections 111.70(4)(a), 111.07(2)(b), and 101.21 of the Wisconsin Statutes; that in a written communication dated June 28, 196 the Examiner denied said request for depositions prior to formal hearing; that on July 7, 1969 Counsel for the Respondents filed a writ motion to the Commission requesting the Commission to set aside the Examiner's denial and requested issuance of an Order directing the tak of depositions and the issuance of subpoenas for deponents James W. Mi Representative, and Darrel Molzahn, Secretary of 1672-B, AFSCME; that July 8, 1969 the Commission issued an Order granting in part the afore motion and further ordered that the above named Complainants in Case No. VI, be afforded an opportunity to answer the aforementioned counte claim contained in Respondents' Answer; that on July 16, 1969 the Exam presided over the taking of depositions by Respondents of deponents, James Miller and Darrel Molzahn, for the limited purposes of discovery on the part of the Respondents; that thereafter on said date, the Examiner commenced hearing on the complaints in the City Hall, Green Bay, Wisconsin; that subsequent hearings in the matters were conducted by the Examiner on July 17, 18, August 4, 5, 6, 19, 20, 21, 1969; and that in the course of hearing on August 5, 1969 the Examiner granted t oral motion of Respondents, AFSCME agreeing in that regard, consolidat the complaint filed by AFSCME et al (Case VI - No. 12944 - MP-63) and separate complaint of the Respondents designated Case VII No. 13098 MP and that the parties further agreed that the official record covering days of hearing applied to the consolidated actions; that the official record includes the receipt of exhibits in the course of deposition pr ceedings, together with foundation and voir dire examination relating thereto; that the parties filed briefs by December 19, 1969; that the Examiner having considered the evidence, arguments, and briefs of Coun and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Green Bay Employees Local 1672-B, AFSCME, AFL-CIO, herei after referred to as AFSCME, is a labor organization representing custodial and maintenance employes of Joint School District No. 1, Cit of Green Bay et al.

2. That Norbert McHugh, a named individual Complainant, is a former employe of the Respondent Board of Education, Joint School Dist No. 1, City of Green Bay et al, having been previously employed from July 8, 1946 at least to November 11, 1968, and having been reemployed on December 2, 1968, continuing in said employment up to May 12, 1969; that McHugh served as the Local President of AFSCME at least from October 10, 1968 and for all time material herein; that prior to said date N. McHugh served for several years as a local union officer and bargaining committee member in Teamsters Local No. 75, the predecessor bargaining representative for custodial employes; that individual had previously been employed from October 1955 to November 1968, a

up to May 12, 1969, and that from at least December 2, 1968 Hutzler served as Vice President of AFSCME and that in 1967 and part of 1968 Hutzler served for a period of time on the Teamster bargaining committee; that individual Complainant Darrel Molzahn is a former employe of the Respondent, having been employed from December 10, 1947 to November 11, 1968 and thereafter reemployed on December 2, 1968, continuing in employment up to May 12, 1969, and that Molzahn at least from October 10, 1968 and for all the time material herein, having served as Recording Secretary of AFSCME and that prior to said date having served on the Teamster bargaining committee; that individual Complainant Ann McHugh is a former employe of the Respondent, having been previously employed from September 6, 1939 up to November 11, 1968 and thereafter reemployed on December 2, 1968, continuing in employment up to May 12, 1969, and that Ann McHugh served as Treasurer of AFSCME and performed some duties of Secretary in handling the minutes and notices of meetings from at least October 10, 1968 and for all time material herein, and that prior to said date having served as a local officer in Teamsters 75.

3. That the Board of Education, Joint School District No. 1, City of Green Bay, et al, hereinafter referred to as the Municipal Employer, is a Wisconsin municipal corporation organized and created under the laws of the State of Wisconsin, with its offices at 100 North Jefferson Street, Green Bay, Wisconsin, and that it operates, controls and maintains elementary and secondary schools in the City of Green Bay and the towns of Allouez, Bellevue, DePere, Eaton, Green Bay, Humboldt and Scott; that the Board of Education of Joint School District No. 1, City of Green Bay, et al, hereinafter referred to more particularly as the School Board, has been given the authority and responsibility under the laws of the State of Wisconsin for the management, control and supervision of the affairs of the District.

4. That Mr. Edwin Olds, the individual named Respondent in the captioned matter, Case VI, No. 12944, MP-63 (and a named Complainant in Case VII, No. 13098, MP-70) is the Superintendent of the District for the Municipal Employer and has been given administrative responsibility by the School Board for the management of the school system and supervision of the professional and nonprofessional personnel employed by the Municipal Employer.

5. That Mr. Donald VanderKelen is a labor relations consultant and labor negotiator representing several municipal employers in northeastern Wisconsin and for all time material herein has been engaged by the Municipal Employer to negotiate, on its behalf, collective agreements with labor organizations representing its employes, including collective agreements with representatives of its maintenance and custodial employes; that VanderKelen has also been commissioned by the Municipal Employer to deal with the labor organization representing the aforementioned employes over matters involving grievances and matters related to the administration of the collective agreement; that in addition VanderKelen during the period of time material herein, did advise the School Board and the Superintendent with respect to matters connected with conferences and negotiations with labor organizations including AFSCME, and with respect to matters involving administration of the collective agreement; that for all times material herein VanderKelen functioned in accordance with the Municipal Employer's commission of his authority, expressed or implied, and acted on behalf of the Municipal Employer, as its agent, within the scope of his aforesaid authority; and that VanderKelen discharged the duties of a "labor negotiator", as that function is described in Section 111.70(5) of the Wisconsin Statutes.

6. That in the autumn of 1966 the Municipal Employer negotiated a collective agreement with a labor organization then representing its maintenance and custodial employes namely Drivers, Warehousemen, and Dairy

Employees Union Local No. 75, hereinafter referred to as the Teamsters, which agreement was executed by the Municipal Employer and reduced to writing in the form of a resolution of the School Board covering wages, hours and working conditions of the aforesaid maintenance and custodial employes for 1967; that such bargaining relationship between the Municipal Employer and Teamsters dated at least from 1962; that in 1962 the aforesaid parties discussed and negotiated the question of shift schedules for custodials employed in the secondary schools, the result of which placed some custodial employes on night shifts in the secondary schools from at least 1962; that in the autumn of 1967 the Teamsters and the Municipal Employer engaged in conferences and negotiations for a collective agreement which was to be effective for the calendar year 1968 covering wages, hours and working conditions of the maintenance and custodial employes and that such agreement, though not formally executed by the Municipal Employer, was given full force and effect by both the Municipal Employer and the Teamsters, except for a partially unresolved matter relating to an hours of work provision affecting the latitude of the Municipal Employer to effectuate night shift assignments of inside custodials in the elementary schools; that among the provisions of the 1968 accord, to which the Teamsters and Municipal Employer gave full force and effect, were provisions encompassing seniority, job posting for vacancies, a grievance procedure and final and binding arbitration of unresolved disputes arising under the collective agreement.

7. That on at least two occasions in 1968 representatives of the Teamsters bargaining committee, comprised of Business Agent Mel Blohowiak, employe-members, Norbert McHugh, Louis Hutzler, Darrel Molzahn, and Lloyd Giese, met with representatives of the Municipal Employer, Negotiator VanderKelen, Nick Dallich, Director of Building and Grounds, and Olds attending at least one meeting, to discuss the question of prospective night shift coverage of custodial personnel for the elementary schools, in an effort to reach an accord on effectuating transfers to night-shift assignments with corresponding day shift reductions, an operational change desired by the Municipal Employer; that the last of such conferences and negotiations between Teamsters committee and the Municipal Employer occurred sometime in late May 1968, at which meeting Hutzler, an employe-member of the Teamster committee, requested that Dallich draft a memorandum containing the schedule of prospective transfers, an enumeration of schools to be affected and the personnel to be slotted in such assignments from the point of view of the Municipal Employer; that Dallich left the bargaining table at the conclusion of the May 1968 meeting under the impression that the aforesaid Teamster committee had directed him to draw up and implement a schedule of shift changes and transfers of custodials, with the attending possibility that said Teamster committee would seek review and later discussion of those changes after implementation, where specific changes raised problems; that the aforesaid employe-members of the Teamster committee believed that the understanding, from the aforementioned exchange with Dallich, was to the effect that Dallich would prepare in the following two to three weeks a schedule and list of transfers which the Municipal Employer believed feasible and which then would be considered anew in bilateral negotiations between the Teamsters bargaining representatives and the Municipal Employer; that no further oral or written accord was ever effectuated between the aforesaid parties to the 1968 collective agreement, as to the application or suspension of the then existing Seniority and Posting provisions of said collective agreement to the prospective shift changes which might otherwise affect school assignments and hours for custodials working in elementary schools.

8. That in the spring of 1968, but prior to June 5, 1968, Olds engaged George Bunker, a supervisory employe, in a conversation near

an elevator in the municipal building and asked Bunker whether he, while serving as a supervisor, had once been ordered to leave a school building by N. McHugh. Bunker replied to the effect that he had, but that the incident occurred nine (9) or ten years back; that Olds then remarked that such an act could have been reason for N. McHugh's dismissal to which Bunker replied that at the time he had no such power of dismissal; that Bunker later confronted N. McHugh as to whether he, McHugh, had ever told anyone about their disagreement of some nine years back, to which N. McHugh replied in the negative; that N. McHugh was advised by Bunker of Olds' interest in the stale matter; that Olds never contacted N. McHugh with respect to the matter nor did Olds make any further contact with the supervisors of N. McHugh for the purpose of recording the incident.

9. That sometime in the spring of 1968, and at least six days prior to June 5, 1968, in the course of negotiations between the Teamster bargaining committee and the Municipal Employer, at which Norbert McHugh and Superintendent Olds were in attendance, N. McHugh, in retort to representations by the Municipal Employer as to the need for more custodial coverage in the evening hours, contended that a Principal of one school had volunteered to McHugh that a custodial assignment for an evening shift at his school was not working; and that said Principal had further exhorted N. McHugh to try to influence a change back to a day shift schedule; that Olds, in reaction to N. McHugh's representation, indicated that if a Principal had expressed such an opinion, he was certain that said individual had since changed his mind; that a day or two after the aforesaid bargaining meeting, Olds telephoned McHugh and engaged in conversations (not a part of bilateral discussions between the Teamsters and the Municipal Employer bargaining committee) to the effect that Olds was disturbed about N. McHugh's version of the Principal's representations as to the efficacy of night-shift custodial assignments and that he, Olds, was intent on "getting to the bottom of the matter"; that within the next several days and on a Friday, Olds dispatched a letter addressed to N. McHugh by way of George Bunker, the Foreman of custodial employes, which N. McHugh received on or near 3:00 p.m. that Friday afternoon, wherein Olds directed McHugh to report to the Superintendent's office by 4:00 p.m. on the same afternoon to meet with Olds and the Principal involved over the matter of the Principal's having allegedly criticized the value of evening custodial hours; that N. McHugh telephoned Olds and advised him that he had a previous appointment for the 4:00 p.m. hour on said Friday, which would prevent his attending the meeting called by Olds; that in the course of said telephone conversation N. McHugh for the first time advised Olds, that he had another witness to the statement attributed to the Principal, named Willy Walenski, a fellow maintenance man who also heard the Principal's remarks made at the Webster school; that Olds in reaction inquired of McHugh as to why Walenski had also been present at the aforesaid work place to which McHugh replied that he and Walenski often worked as a maintenance team to complete their mechanical tasks; that subsequent to the aforesaid telephone conversation between McHugh and Olds, Olds made no further oral or written contact with McHugh with respect to eliciting information regarding McHugh's exchange with the Principal.

10. That on May 22, 1968, AFSCME filed a petition for a representation election with the Wisconsin Employment Relations Commission wherein AFSCME alleged that a question of representation had arisen because of its claim to represent a majority of the maintenance and custodial employes of the Municipal Employer and further alleging that Teamsters Local 75 may have some interest in the question; that the Commission, on June 6, 1968, issued notice of hearing advising the Municipal Employer of AFSCME's petition and of its claim of majority

status, with the potential intervenor, Teamsters 75, also being advised in that regard; hearing on AFSCME's petition, after one postponement of same, was conducted on June 24, 1968 in the course of which Teamsters were permitted to intervene and have its name placed on the ballot together with AFSCME; that on September 25, 1968, pursuant to its Direction of Election, the Commission conducted a representation election the results of which established AFSCME as the designated majority representative of the maintenance and custodial employes; that on October 10, 1968 the Commission mailed its certification of the results of said vote wherein AFSCME was certified as the exclusive collective bargaining representative of "all maintenance employes" of the Municipal Employer; that prior to the date of the aforementioned hearing on the representation petition, N. McHugh and Louis Hutzler were subpoenaed prior to the date of hearing to appear at the City Hall, Green Bay, Wisconsin that N. McHugh showed his subpoena to Robert Duchateau, Foreman of the outside maintenance crew, on the day before the hearing, and that N. McHugh and Hutzler did not appear at their assigned work place at the normal 7:00 a.m. starting time on June 24, 1968, the date of the hearing but reported to City Hall, Green Bay, at the hour for commencement of hearing namely, at 10:00 a.m.; that no other bargaining unit employes were subpoenaed by any of the parties having an interest in the matter; that at least two supervisors employed in the Buildings and Grounds Department of the Municipal Employer also appeared at said hearing and that subsequent thereto they suffered no loss in salary for such attendance; that following the next pay-period after the hearing, N. McHugh learned from a payroll clerk of the Municipal Employer that his wages had been docked for one day's pay for said day of hearing; that Hutzler also had his wages for the same period reduced by one (1) day for the same reason; that N. McHugh raised no grievance concerning said reduction and he did not inform any supervisory personnel of the Municipal Employer prior to date of hearing, that he desired or expected time off with no loss of pay for the actual work-hours lost because of his required attendance at said hearing; that there existed no previous policy or practice of the Municipal Employer paying for work time spent by non-supervisory custodial employes in hearings involving labor relations matters affecting the custodial unit.

11. That on, or shortly before October 10, 1968, the Municipal Employer met with the bargaining agent for Teamsters, Mr. Blohowiak, and the bargaining representative for the newly selected AFSCME, James Miller and N. McHugh, in the course of which an initial controversy ensued as to which bargaining agent represented N. McHugh; that thereafter Olds questioned McHugh as to whether on a previous occasion, N. McHugh had made a statement to the effect that he would get rid of Superintendent Olds in much the same manner as he was able to do in the departure of a previous Superintendent; that N. McHugh denied that he had ever made such a statement; that VanderKelen, who was also present, questioned McHugh as to whether he had made a statement to the effect that the female custodials would be laid off when the School Board effectuated a night shift; that McHugh also denied making said statement; that Olds and VanderKelen then indicated that they were at that point satisfied with the verity of McHugh's denials and both further indicated in effect to McHugh that the matters would be considered closed.

12. That over the period from June 1, 1968, and up to September 16, 1968, Dallich prepared a schedule embodying shift changes and

custodials; that by middle September 1968, Dallich conferred with Olds with respect to the detailed changes; that on September 16, 1968, and prior to the representation election, Olds and Dallich submitted the planned shift changes for custodial-staff to the Property Committee of the School Board; that the Property Committee, with five members of the School Board in attendance, approved the custodial reorganization; that the minutes reflecting such approval set forth an array of elementary schools affected by the changes, the distribution of classifications for a number of schools and the coverage of hours for the respective schools; that said minutes of the Property Committee meeting also set forth in part the following summary:

> "5. Custodial Reorganization
>
> Mr. Olds reviewed the need for the performance of custodial work during the evening hours in the elementary schools. Mr. Dallich outlined the reorganization plan and personnel transfers which would be required to institute night shifts in all of the schools. . . .
>
> A meeting will be arranged with the necessary representatives to implement the program."

13. That on September 25, 1968 the Commission conducted a representation election among maintenance-custodials which resulted in the employes selecting AFSCME over Teamsters as their designated representative; that on October 10, 1968 the Commission issued its certification of AFSCME as exclusive bargaining representative; that on, or shortly after, October 31, 1968 the Municipal Employer distributed to its employes on the maintenance and custodial staff a four-page mimeographed memorandum outlining the scheduled changes, the hours of work and the transfers of custodial personnel which the Municipal Employer intended to place into effect on November 11, 1968; that the aforesaid document contained two paragraphs of background information which reads as follows:

> "It is incumbent within the delegation of responsibility of the Board of Education that the needs of the school system be best served by the property and personnel of the system. A continuing study and analysis of the system needs makes it imperative that the program of cleaning the schools be modified to best serve the children and the school buildings. Therefore, custodial work will be performed and transfers of personnel made to such buildings and at hours in which the work is available to be performed.
>
> Since the bargaining unit has long been advised of this system change and since that unit has asked that assignments be made by management the following changes are effective as of Monday, November 11, 1968.
>
> . . ."

14. That on or near November 4, 1968, Miller contacted Olds by telephone and Olds referred Miller to Dallich for information concerning implementation of the shift changes; that Miller then telephoned Dallich and advised Dallich that since the newly certified AFSCME had as yet not been given an opportunity to discuss the planned changes with the Municipal Employer, that he, Miller, on behalf of AFSCME, was requesting

a postponement of the effective date of the transfers; that Dallich replied to the effect that we have waited this long that we could wait a week or two longer and thereupon referred Miller to VanderKelen for any possible action in that regard; that Miller sometime between November 5 and November 8, 1968, made telphonic contact with VanderKelen at a time coincident with Dallich's leaving for vacation; that VanderKelen suggested by telephone that Miller contact Olds with regard to the Municipal Employer's November 11 date for effectuating the transfers; that in the course of Friday, November 8, 1969, Miller and Olds were unsuccessful in their mutual efforts to make contact by telephone; that on Saturday, November 9, 1968, Miller reached Olds and advised him that the possibility of the implementation of the shift changes without prior discussions with AFSCME was likely to cause problems with the custodial-members of AFSCME and that Miller further requested that Olds and the Municipal Employer meet and negotiate with AFSCME prior to implementing the shift changes on November 11, 1968; that Olds advised Miller that the Municipal Employer would be unable to arrange a negotiation meeting with AFSCME prior to the November 11 implementation date but that the School Board representatives were willing to meet and discuss the transfers and shift changes after the implementation of same; that the Municipal Employer declined to engage in bilateral negotiations with AFSCME prior to implementing the shift changes covering custodials in elementary schools which were approved by the Property Committee of the School Board on September 16, 1968; that the Municipal Employer after the aforesaid date made no arrangements for a meeting "with the necessary representatives to implement the program" namely, with AFSCME, the exclusive bargaining representative of maintenance-custodial employes; that in the course of the period, October 10, 1968 to November 11, 1968, no agreement was ever reached between the Municipal Employer and AFSCME with respect to implementing the aforesaid shift changes, and that no bilateral agreement, in that regard, was ever effectuated between the Municipal Employer and any other designated representative of the maintenance-custodials in the course of the period beginning September 16, 1968 and ending October 10, 1968.

15. That on Sunday, November 10, 1968, AFSCME called a special meeting of its membership and voted to strike as a response to the Municipal Employer's refusal to meet and negotiate with AFSCME before implementing the aforementioned shift changes; that on November 11, 1968, substantially all of the AFSCME members, employed as maintenance-custodial employes, failed to report for work at their designated schools, a strike action prohibited by Section 111.70(4)(l), Wisconsin Statutes; that at least two members of AFSCME abandoned said strike within two days after having initially participated in the work stoppage, including one Earl Taylor, a former officer of AFSCME and Mr. William Nies; that in addition a custodial employe not a member of AFSCME, named Clarence Van Beckum, participated in the stoppage; that in the course of the strike Dallich telephoned one Anton Leick and offered him a custodial job with the School District and Leick accepted; that thereafter Leick advised his then current employer that he would be quitting to take a job with the School District; that on the weekend prior to the Monday that Leick was scheduled to report to the custodial job, Leick received two threatening telephone calls from unidentified persons, both calls connected with the custodial job offer; that between the time of the job offer from Dallich and the threatening telephone calls, Leick spoke to no one about Dallich's offer of employment other than Dallich and his former employer; that the Municipal Employer in the early days of the strike hired additional custodial employes, at least 12 of whom remained on the active payroll as of December 2, 1968; that near the end of the second week of the strike the Municipal Employer sent the following letter over the signature of Dallich to each of the striking employes:

"To: _____ _____

I have been advised that on November 11, 1968, you had unlawfully left your place of employment with the Green Bay Board of Education. Your action is considered just cause for your dismissal. You are hereby notified that your employment with the Board of Education, Joint School District No. 1, City of Green Bay is terminated effective November 11, 1968."

16. That on November 13, 1968, AFSCME filed a complaint with the Wisconsin Employment Relations Commission alleging inter alia:

". . .

#7. That said unilateral changes in shift assignments and working conditions were made by the Board and Edwin B. Olds in violation of the seniority provisions of prior labor contracts and in violation of seniority provisions established by past practices of long standing.

#8. That the aforesaid conduct interfered with, restrained and coerced the employees in the exercise of their rights guaranteed by Wis. Stats., 111.70 (2), all in violation of s. 111.70(3) (a) 1, Wis. Stats., and further constituted discrimination against the involved employees in regard to membership in Complainant, all in violation of s. 111.70(3) (a) 2, Wis. Stats."

that the Municipal Employer filed a demurrer to the complaint averring that the allegations did not state a claim for relief under the Act. Prior to hearing on the aforesaid complaint, counsel for AFSCME, on December 6, 1968, advised the Commission in writing that AFSCME desired to withdraw the aforesaid complaint and on said date an examiner for the Commission dismissed same; that in the course of the period November 11, 1968, to December 2, 1968, the Municipal Employer and AFSCME engaged in bilateral negotiations and mediation in efforts to resolve the disputes and end the stoppage; that on December 2, 1968, the parties reached a settlement agreement of the strike, provided for the reinstatement of strikers and further agreed to the terms of a collective bargaining agreement covering wages, hours and working conditions for the maintenance and custodial employes to be effective December 2, 1968, at least through December 31, 1969; that with respect to the Municipal Employer's planned implementation of the schedule changes for November 11, 1968 for elementary custodials, a slightly revised schedule governing assignments to elementary schools was placed into effect on or near December 3, 1968, after such revision had been negotiated between Dallich and employe-members of the AFSCME bargaining committee coincident to settlement talks; that in the course of said bargaining the Municipal Employer requested of AFSCME that non-members of AFSCME, who were non-striking employes also be polled with respect to ratification of the aforesaid settlements and that said group in fact also ratified the settlements; that representatives of AFSCME and the Municipal Employer did not negotiate in their strike settlement agreement or in their collective agreement any understanding in the nature of a condition, that the 1969 collective agreement reached on December 2, 1968, could be vitiated at the instance of the Municipal Employer if AFSCME representatives or members thereafter should utter any derogatory remarks concerning non-strikers; that at the time of settlement the parties thereto made general expressions that no reprisals would follow the work stoppage, but the viability of the collective agreement was not conditioned accordingly; that on December 2, 1968, Olds caused to be

published and delivered to the custodial employes, both strikers and non-strikers, a summary prepared by the Municipal Employer indicating that a 1969 collective agreement had been negotiated and describing the strike settlement, including the claimed accord advanced by the Municipal Employer with respect to seniority ranking for certain groups of employes, which reads in part as follows:

> "As you are all now aware, the labor dispute which involved a walkout of most of our custodial employees has now ended. All custodians whose contracts were terminated when they walked out have been reinstated and returned to work as of today.
>
> . . .
>
> The re-employment plan and a 1969 contract were negotiated at the same time.
>
> Under the terms of the agreement all employees who left their posts November 11 were re-hired as interrupted service employees. As such they hold the same seniority among themselves as they did when they walked out November 11 and though their re-hiring date is December 2, 1968, they receive credit for past service so that no change will be made in vacation, sick leave or longevity status. However, employees who stayed on the job will, as continuous service employees, hold seniority over interrupted service employees.
>
> During the three-week interim, some new employees were hired as either probationary or temporary employees; these have now been reduced to about 12, who will be retained if they work out and whose seniority will be greater than that of interrupted service employees. While there may be overstaffing in some instances, it will be only temporary because there were several vacancies, several retirements are in the offing, more staff will be needed for the new schools, etc:
>
> . . .
>
> The new contract calls for a management rights clause that outlines the right of the Board to make assignments on school needs and employee qualifications. The shift changes announced October 31 will go into effect December 2.
>
> The new agreement has been ratified by the custodians who stayed on the job, those who walked off their jobs, and by the Green Bay Board of Education. Ratification by all parties concerned indicated agreement on terms."

that the 1969 collective agreement contained among its provisions the following terms material herein:

"ARTICLE I

RECOGNITION AND UNIT OF REPRESENTATION

The Employer recognizes the Union as the exclusive collective bargaining representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representative, on questions of wages, hours, and conditions of employment for the unit of representation consisting of all employees of the Employer employed as follows:

1. All maintenance employees of the Board of Education, Joint School District No. 1, City of Green Bay, ET.AL., excluding professional teachers, supervisors, department heads, craft employees, elected or appointed officials, cooks, clerical and confidential employees.

. . .

ARTICLE II

MANAGEMENT RIGHTS

The Board of Education, on its own behalf, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generality of the foregoing, the right:

(1) To the executive management and administrative control of the school system and its properties and facilities;

(2) To hire all employees and subject to the provisions of law, to determine their qualifications and the conditions for their continued employment, or their dismissal or demotion, and to promote, and transfer all such employees;

(3) To determine hours of duty and assignment of work;

(4) To establish new jobs and abolish or change existing jobs;

(5) To manage the working force and determine the number of employees required.

The exercise of management rights in the above shall be done in accordance with the specific terms of this agreement and shall not be interpreted so as to deny the employee's right of appeal.

. . .

ARTICLE VIII

SUSPENSION - DISCHARGE

(a) ...

No employee who has completed probation shall be discharged or suspended, except for just cause. An employee may be dis-

charged immediately for dishonesty, drunkeness, reckless conduct endangering others, drinking alcoholic beverages while on duty, unauthorized absence. An employee who is dismissed or suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of the notice shall be made a part of the employee's personal history record, and a copy sent to the Union. An employee who has been suspended or discharged, may use the grievance procedure by giving written notice to his steward and his department head within five working days after dismissal. Such appeal will go directly to the appropriate step of the grievance procedure. Usual disciplinary procedure: The progression of disciplinary action shall be oral reprimand, written reprimand, suspension, and dismissal. The union shall also be furnished a copy of any written notice of reprimand, suspension or discharge.

ARTICLE XVI

GRIEVANCE PROCEDURE

All grievances which may arise shall be processed in the following manner:

. . .

Step 5. Within five (5) days of completion of Step 4, the grievance shall be submitted to arbitration. An Arbitration Board shall be composed of three disinterested members. The employer and the union involved shall each select one member of the Arbitration Board and the two members so selected shall then select a third member, who shall act as chairman. Should the two members selected be unable to agree on the selection of a third member, then the selection of the third member shall be left to the Wisconsin Employment Relations Commission. The Board of Arbitration, after hearing both sides of the controversy, shall hand down their decision in writing within ten (10) days of their last meeting to both parties to this Agreement, and if approved by not less than two (2) members thereof, such decision shall be final and binding on both parties to this agreement.

. . ."

17. That on December 23, 1968, the Property Committee of the School Board recommended a report for action by the School Board, providing that a certain benefit be paid to a limited group of employe who were employed in the unit and who had remained on the job throughout the strike and which report reads in part as follows:

"....
That the following members of the custodial and maintenance staff be paid $100 as an adjustment for additional workloads imposed during the period of November 11, 1968 to December 2,

Frank Stoffelen
Mrs. Viola Stelloh
Earl Halstead
John O'Malley

. . ."

(Underlined employes excluded from unit - emphasis supplied)

that the School Board on the same date adopted the aforesaid report of the Property Committee; that the Municipal Employer did not negotiate with AFSCME before granting such a $100 bonus to the aforementioned non-striking custodials who were employed in the bargaining unit and who were covered by the terms of the 1969 collective agreement; that all of the aforesaid recipients of the $100 bonus were employed by the Municipal Employer on or before November 11, 1968, and as a group had continued to work between said date and December 2, 1968, the period of the AFSCME strike; that several employes hired on or near November 14, 1968 as replacements for the striking custodials, as well as two striking AFSCME members who abandoned the strike by November 12, 1968, also performed under adverse conditions reflecting additional workloads for the period of the strike; that the Municipal Employer did not grant either a full, or a pro rata, share of said bonus to said non-striking replacements or to the two employes who came back in the first days of the strike.

18. That on January 13, 1969, James Miller, Local Representative of AFSCME, advised the Municipal Employer in writing that, AFSCME opposed the grant of the $100 bonus, requested that it be rescinded, pointed out that such action by the Municipal Employer had been effectuated without negotiations with AFSCME, and that such grant was "discriminatory" and in contravention of AFSCME's certification as exclusive bargaining representative; that on January 31, 1969, Olds, on behalf of the Municipal Employer, directed a reply in writing to Miller, rejecting AFSCME's request and contentions and advised Miller that the School Board would let its action stand; that Olds further advised Miller therein that any other questions with regard to the matter should be directed to its Labor Negotiator; that on February 5, 1969, the Attorney for AFSCME directed a letter to the Municipal Employer wherein he advised the Municipal Employer that AFSCME intended to submit its grievance, challenging the $100 bonus, to arbitration pursuant to "Step 5 of the grievance procedure in the collective bargaining agreement" (full text of letter, post., Appendix G); that on February 10, 1969, VanderKelen, in a written reply, constructively rejected AFSCME's request for arbitration by fielding said Attorney's request with the words, "our present agreement does not have this numbered Step, nor does it have provision for an arbitration representative." (full text, post., Appendix H, following Memorandum)

19. That on March 31, 1969, Oberbeck directed a letter to the Labor Negotiator for the Municipal Employer, which contained language resolving the only drafting problem left over from the December 2, 1968, accord between the parties with respect to a 1969 collective agreement, which language clarified the substantive agreement between the parties as to the harmony between the Management Rights provision and the clause, Hours of Work, Article XXV of the collective agreement; that Oberbeck's letter reads as follows:

"Mr. Don VanderKelen

. . .

Dear Don:

Pursuant to our telephone conversation on March 31, 1969,

the following paragraph is to be added to Article XXV, Hours of Work:

> e. The hours listed are the generally applied hours of work and shall not abrogate the management right to assign hours of work or jobs as determined by the needs of the school system and as determined by provisions of this agreement. The exercise of this right shall be subject to the grievance procedure of this agreement."

20. That on April 30, 1969, a public meeting was held in the City Council Chambers of Green Bay City Hall before the Advisory Committee of the Common Council, the purpose of which was to elicit discussion and positions of the public over the question as to whether the members of the School Board should be elected, or continue to be appointed; that some thirty (30) persons were in attendance, including three of the individual Complainants, N. McHugh, Hutzler, and Molzahn, who were accompanied by at least two other custodial employes; that several City aldermen were in attendance, including Alderman Engebos who chaired the proceeding; that a Mrs. Angus, a member of the School Board, was also in attendance; that the five custodial-employes and AFSCME members made no statement in the course of the Advisory Committee hearing, but that said individuals did react to some of the statements of speakers before the Committee by engaging in vigorous applause in the form of hand clapping; that VanderKelen, sometime well into the course of the proceedings, made a statement to the Committee that, "five persons in the room were school maintenance workers who had walked off the job last year"; that Vander-Kelen further stated in the form of a question that except for four persons at the meeting "did all of the others in attendance have an interest in education or did they have a vested interest?"; that the Chairman of the Committee thereupon ruled VanderKelen out of order because of his state-ment; that the member present from the School Board made no statements and made no comment in reaction to the aforesaid remarks of VanderKelen.

21. That on April 18, 1969, several custodial employes of the Municipal Employer traveled to Ripon, Wisconsin, for a regional conference of public school maintenance employes, a proceeding unconnected with the affairs of any labor organization; that among those custodials making the trip was one Germain Baumgart who rode with two other female custodians named, Alberta VanLanen and Eva Allen, all three of which had ridden in a car with three men, who were also employed as custodials; that on the return trip to Green Bay one of the men advised the female passengers that they had been confronted by an individual, who they presumed was an AFSCME member and a custodial employe of the School District, who had asked the question as to why they were hauling "scabs" to and from the convention; that at the time Baumgart was aware of the fact that both she and the other girls were all current members of AFSCME; that at least one of the other girls thereafter had informed Baumgart on or near April 18, 1969, that there was little reason for their continuing union membership if other employes were labeling them "scabs"; that on Monday, April 21, 1969, prior to the beginning of her afternoon shift, Baumgart met Ann McHugh, and related to A. McHugh the difficulty which some unidentified person caused at Ripon the preceding Friday, with respect to their mistakenly referring to all or some of the three female passengers as "scabs"; that because of this misguided label, Baumgart requested that Ann McHugh, the Recording Secretary of AFSCME, issue a list of names of those custodials who were AFSCME members so

that the membership at large could distinguish AFSCME members from non-members; that A. McHugh replied that she would compose a list of custodials who were non-members, since her task would be easier with a shorter list; that Baumgart had no further reaction to A. McHugh's suggestion that the prospective list would be one of non-members; that shortly thereafter A. McHugh, in the course of traveling home with her brother, advised N. McHugh of her intentions to compose a list of non-members to clear up the confusion as reported by Baumgart with respect to the Ripon incident; that N. McHugh's only reaction was to the effect that he hoped her plan would straighten out the matter.

22. That sometime between April 21 and 27, 1969, A. McHugh typed up a series of originals and copies of a list of custodials, who were not members of AFSCME, which contained fourteen (14) names followed by a phrase of four words, "all hired during walkout"; that it was the practice at least since October 1968 for the AFSCME officers, A. McHugh and Darrel Molzahn, to collaborate in the distribution of monthly meeting notices, Molzahn sending such notices to the West-side schools and A. McHugh sending same to East-side schools where AFSCME members were employed; that A. McHugh on or near April 27, 1969, advised Molzahn that she intended to send the lists of non-member custodials together with the regular monthly meeting notices for a May 3 meeting; that after viewing said lists, Molzahn suggested to A. McHugh that the conjunction "and" should be inserted after DeBouche", the last name on the list, in order to make the enumeration and meaning more grammatically correct; that Molzahn thereupon wrote in the conjunction "and"; that A. McHugh and Molzahn distributed the lists to those East and West-side schools where AFSCME members were employed, including the dispatch of such a list with the accompanying meeting notice to a supervisory employe at the Garage for distribution to AFSCME members at that site; that the aforesaid meeting notices contained the following verbiage:

"POST ON BULLETIN BOARD

From	Board of Education Maintenance Employees Local 1672B
To	All Union members. Next meeting will be held..... Date: Saturday - May 3rd Time: 9 a.m. Place: Northside Hall"

that the lists of non-members contained the following typed verbiage and typed names: (the word "and" was handwritten on a number of Molzahn's lists)

"From Board of Education Maintenance Employees Local 1672B
To All Union members
Reason To settle a misunderstanding.....The following are not members of Local 1672B.

Gerald Ahl	Floyd Johnson	Robert Burkel
Ralph Carpenter	Richard Ewing	Earl Halstead
Jack O'Malley	Harold Wiesner	Earl Taylor
Wm. Nies	Viola Stelloh	Jos. DeBouche and
Clarence Van Beckum	Frank Stoffelen	All Hired during walkout.

Keep on file in case any questions arise...Do Not Post."

that one such list was received by William Ernst, who worked at the Langlade School at the time with one other custodial employe, both bei members of AFSCME; that the Langlade list contained no conjunction "an but an additional name, Ray Carpenter was added in handwriting, by a Thomas Steeno, a custodial employe and AFSCME member, after Ernst had placed the list of non-members with the attached meeting notice on a bench in the boiler room area; that on Friday, May 2, 1969, a Mr. Slad member of the School Board and VanderKelen were driving in the vicinit of the town of Allouez and stopped to enter the Langlade School near the boiler room area; that at about 10:45 a.m. on May 2, VanderKelen a Sladky discovered the list of non-union employes on a bulletin board in the boiler room; that Mr. Sladky instructed Ernst to remove the lis and meeting notice from the board and separate the documents; that Ernst at the instance of Sladky, signed a short statement, VanderKelen and Sladky also having signed, which in substance codified the limited knowledge Ernst had of said list namely, the hour that said list was observed on the board, the fact that it had come from the Union and th Ernst had not posted same.

23. That on Monday, May 5, 1969, a conference was arranged betwe Sladky, Olds and VanderKelen to discuss the discovery of the previous Friday, and to apprise Olds of the aforesaid Ernst statement; that representatives of the Municipal Employer conferred in the course of t period, May 5 to May 9, 1969, with respect to the ramifications of suc a list being composed and circulated; that Olds concluded that the nam of the non-member custodials, and the catch-all reference to the Novem 1968 strike-replacements amounted to a "selecting-out" of such non-member custodials of AFSCME for special avoidance and further conclude therefrom, after conferring with Counsel, that the existence and circu tion of such a list constituted an illegal blacklist; that the Municip Employer further decided that AFSCME was responsible for its composit and circulation, and presumptively AFSCME's four local officers were responsible for acts of the local union; that on May 8 or shortly befo said date, a reporter for the Green Bay Press Gazette was advised by VanderKelen and Olds with respect to the substance of the alleged blac list discovered by the representatives of the Municipal Employer; that said reporter was able to gather a story including a direct quote from Olds, that posting of the blacklist was "terribly serious"; that in addition, on May 8 the Municipal Employer furnished the reporter with substance of four suspension letters which were to be issued the follo day by the Municipal Employer; that on Friday, May 9, over the signatu of Olds, the Municipal Employer sent by registered mail four identical letters of suspension to A. McHugh, Molzahn, Hutzler, and N. McHugh, which read as follows:

"Dear Mr. McHugh:

This is to advise you that you are suspended from employment with the Green Bay Board of Education effective May 12, 1969. Further you are notified that I am, by written communication to the Board of Education, recommending that disciplinary action be taken by the Board.

Request is being made to the President of the Board of Education for a special meeting to consider your continued employment. If

a special meeting date is fixed by the President, you will be notified as soon as it is set. The next regularly scheduled meeting of the Board is May 26, 1969 at 7:30 P.M., Fourth Floor, City Hall, Green Bay, Wisconsin.

I am taking this action because of a blacklist of non-union employees (a copy enclosed) which was found posted on the blackboard of Langlade School and distributed by union officers. You are an officer of AFSCME Local 1672B and, therefore, responsible for the circulation and distribution of this blacklist.

Any property of the Board of Education and keys to Board of Education equipment and buildings shall be turned in to Mr. Dallich's office immediately.

Sincerely yours,

EDWIN B. OLDS
Superintendent of Schools

. . .

cc: Mr. James Miller
Mr. N. Dallich
Members Bd. of Ed."

that the Municipal Employer through the medium of Olds' letter to the four officers on May 9, effectuated constructive discharges of N. McHugh, Hutzler, Molzahn, and A. McHugh as of May 12, 1969; that the sole reason advanced by the Municipal Employer for the aforesaid constructive discharges was because of the responsibility imputed to the four individuals by the Municipal Employer on the basis of their functions as local union officers of AFSCME, including responsibility for the claimed illegal acts of the AFSCME Union in allowing the composition and circulation of an alleged blacklist; that the Municipal Employer had no reservations with respect to the quality of work performed by the four AFSCME officers while all were employed in maintenance-custodial work for the School District; that as of May 9, 1969, the date on which Olds composed the letter triggering the constructive discharges of the AFSCME officers, the Municipal Employer had no knowledge as to the origins, author(s) purpose, circulators of, identity of person posting, existence of union membership action directing its preparation, or the extent of direct involvement of the AFSCME officers with regard to the discovered list at Langlade, or any other lists of non-union custodials; that the Municipal Employer as of May 9, 1969, had no knowledge of any acts of special avoidance, intimidation or coercion engaged in by AFSCME officers or members, directed at non-member custodials at the work place; that the Municipal Employer had no knowledge as of said date whether the Langlade posting of the list or the general circulation of similar lists, caused any of it employes to have seen the list, or to have caused any disruption in the normal operation or flow of work in the school system; that after December 2, 1968, including the period coincident with the discovery of the Langlade list, no instances occurred of AFSCME members or officers practicing special avoidance of non-members in the school system during working hours.

24. That the Municipal Employer arranged for a special meeting of the School Board for May 19, 1969; that six members thereof were in attendance, as well as Olds, Dallich and VanderKelen and City Attorney Doepke; that the four AFSCME officers were present, represented by Oberbeck, and Miller also attended; that the President of the Board stated upon opening that the purpose of the special proceeding was to receive recommendations and to discuss the suspensions of the four maintenance-custodial employes; that Olds read the May 9 letter directed to the AFSCME officers; that Olds described the discovery of the list at Langlade, and made a recommendation to the Board that the four AFSCME officers be terminated pending further information; that VanderKelen then indicated to the Board that a blacklist called for termination but that the prospect of termination could apply to individuals actually responsible suggesting that AFSCME might offer evidence relating to individuals responsible; Oberbeck indicated that the collective agreement made provision for disposing of such controversies and requested that the question of the discharges be thereupon handled as if it were in the grievance procedure of said contract; that the Municipal Employer had a draft of the collective agreement in its possession for approval; that Counsel for the Board responded that the contract had not as yet been approved so that there was a question as to what, if any, grievance procedure applied; that the Board members inquired as to whether the Union would provide details surrounding the posting of the list; Oberbeck declined to use the forum of the Special Board Meeting to bring forth further facts surrounding the controversy and indicated that the Municipal Employer should decide what action it was going to take; that the School Board then adopted Olds' recommendation to terminate the four Union officers, including VanderKelen's proposed modifying condition which was characterized by the Board as an "amendment", covering the possibility that the School Board upon learning of further evidence that others were responsible, may conclude that the four officers were not actually responsible for the list; that shortly after May 19, 1969 the local representative for AFSCME, Miller, filed a grievance on behalf of the four discharged AFSCME officers; that representatives of the Municipal Employer and Oberbeck made arrangements to confer again on May 28, 1969 over the question of the four discharges; that on the same day Oberbeck participated with a City Alderman on an arbitration-panel involving another municipal employer and in the course of a recess Oberbeck spoke with the Alderman about the controversy over the list and the discharges which were then pending with the School Board; that Oberbeck in said conversation with the Alderman made a derogatory reference to the intelligence of the School Board, for their part in discharing the AFSCME officers; that a representative of the Municipal Employer learned of the aforesaid conversation shortly thereafter; that Oberbeck met with School Board representatives on May 28, 1969 in further efforts to resolve the matter, in the course of which Oberbeck referred to the non-member custodials described on the Langlade list, as "scabs"; that on June 3, 1969 Counsel for the School Board composed and directed a letter to Oberbeck advising AFSCME that the School Board "desired to follow the grievance procedure in the proposed contract", and proffered a meeting with its Negotiating Committee for 10:30 a.m., June 6, 1969 at the City Hall for the purpose of further bilateral discussions over the discharge-grievances (full text, post., Appendix I, following Memorandum); that on June 5, 1969, VanderKelen wrote a letter to the School Board; that Olds was aware of the contents of said letter prior to the start of the June 6, 1969 meeting with AFSCME; that the body of VanderKelen's letter to the School Board reads as follows:

"Sometime ago I recommended the acceptance of the Labor Contract language. This recommendation was made contingent on legal approval and with the belief that attitudes agreed to at the negotiations would be those that would prevail during the life of any agreement.

On December 2, the last day of the negotiations, we made it clear that retaliation toward any one involved with the situation at the time would constitute a breaking of the agreements. Subsequent actions are well documented on that score. Under guises not too well concealed, a pattern of pressure politics has been added to the discriminatory practices against the minority of the workers group. The latest was a statement by the state director of the union that a name on the black list was that of "a scab worker". This is an inflammatory statement contrary to the spirit of the agreement.

The actions of pressure are well known, including a pattern now well established in politics of attacking through legislative circles. This action, in my opinion, negates the moral agreement reached on December 2, and I cannot recommend acceptance of any agreement with people who adopt this type of tactic. It is one thing to bargain at a table, but it is quite another to be unctuous at the table and then use every retaliatory power available to bring pressure to the bargaining table."

25. That on June 6, 1969, some members of the School Board and Olds, Doepke and VanderKelen met with the four AFSCME officers, Oberbeck and Miller to discuss the grievances concerning the four discharges pursuant to Doepke's invitation of June 3; that Oberbeck and VanderKelen became involved in a discussion over Oberbeck's reference to non-members as "scabs"; that VanderKelen raised a general complaint about incidents of harassment directed at the non-union custodials; that the parties concluded the meeting without having resolved the discharges.

26. That Ann McHugh and Darrel Molzahn were the only individuals responsible for the preparation and distribution of the list of non-members; that after December 2, 1968, and for all time material herein, no officer or member of AFSCME ever threatened a non-member custodial or any custodial employe who was a former member; and that over said period of time no AFSCME representative or member ever engaged in any acts of coercion or intimidation to hinder or prevent such non-member custodials from pursuing their lawful work and employment.

27. That the Respondents had knowledge that N. McHugh, Hutzler, Molzahn and A. McHugh were active as officers of Local 1672-B, AFSCME; that the primary motivation of Respondents, Olds and the School Board, for discharging Norbert McHugh, Hutzler, Molzahn and Ann McHugh, was not based upon said AFSCME officers' participation in, or responsibility for, the commission of any illegal act, but rather upon their functions as AFSCME officers and for their concerted activity on behalf of AFSCME, the exclusive bargaining representative for maintenance and custodial employes in the employ of the Respondent Municipal Employer.

28. That the Respondent School Board, through its representative, Respondent Olds, acknowledged on December 2, 1968, that it and AFSCME had reached agreement on the terms of a collective bargaining agreement; that Respondent School Board on February 10, 1969, through its agent and Labor Negotiator, refused to acknowledge the existence of such a 1969 collective agreement and thereby repudiated same; that Respondent School

Board, after its acknowledgment of a 1969 agreement, raised no objection to AFSCME as to any impediment which prevented the Respondent School Board giving full force and effect to said collective agreement, other than its agent-Labor Negotiator's second repudiation of said collective agreement on June 5, 1969; that the only other reason the Respondent School Board relied upon for not giving force and effect to the collective agreement was that which was proffered to AFSCME on May 19, 1969, namely that it had not as yet approved or signed the 1969 agreement.

Upon the basis of the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSIONS OF LAW

1. That Respondent, Joint School District No. 1, City of Green Bay, et al, by its officers and agents:

by entering into a collective agreement with AFSCME and subsequently by declining to give force and effect to such an agreement, or to the arbitration provisions contained therein; by repudiating said agreement after leading AFSCME to believe it was ready to negotiate grievances involving the discharges of AFSCME officers, pursuant to the terms of the grievance procedure contained in such collective agreement; by engaging in public criticism of AFSCME members and officers at a public meeting so as to intimidate them from actively participating as interested citizens in a matter of public concern at a public hearing; by threatening to discharge four AFSCME officers, representing that said discharges would stand, unless AFSCME acknowledged the commission of an illegal act, and unless AFSCME or said officers would come forth with the names of AFSCME members or officers responsible for the circulation of the alleged blacklist;

interfered with, restrained and coerced its employes in the exercise of their rights under Section 111.70(2), Wisconsin Statutes, and thereby, has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

2. That Respondent Edwin Olds and Respondent Joint School District No. 1, City of Green Bay, et al, by its officers and agents, by discharing employes Norbert McHugh, Louis Hutzler, Darrel Molzahn and Ann McHugh, discriminated in regard to the tenure of their employment, to discourage membership in, and activities on behalf of Local 1672-B, AFSCME AFL-CIO, and thereby, have committed, and are committing, prohibited practices within the meaning of Sections 111.70(3)(a)2 and 111.70(3)(a)1 of the Wisconsin Statutes.

3. That Respondent Edwin Olds and/or Respondent Joint School Distric No. 1, City of Green Bay, et al, by its officers and agents:

by questioning Norbert McHugh in the presence of his bargaining representative on October 10, 1968; by Olds' inquiry in the Spring of 1968 directed to a subordinate supervisor regarding a stale incident in Norbert McHugh's work history; by Olds' planned interrogation of Norbert McHugh regarding the representations of a Principal, at a time more than one year prior to the filing of AFSCME's complaint herein; by its unilaterally making shift changes of custodial hours in elementary schools on November 11, 1968, and declining to bargain with AFSCME before implementing same; by its affording a reporter of the local press an opportunity to learn of its pending action on prospective discharges of the four AFSCME officers and of its reasons for same, prior to the issue of its termination letters to said employes; by its bargaining demand on or before December

2, 1968, that custodials, not then members of AFSCME, be polled on the ratification of a collective agreement; by its payment of a bonus to non-striking custodials, who were employed before November 11, 1968 (but not to include its failure to proceed to arbitration with AFSCME as to whether the unilateral grant of said bonus would be violative of the collective agreement); by its deduction of one day's pay from the wages of Norbert McHugh and Louis Hutzler, for the time both spent at a hearing involving a representation election under force of a subpoena,

did not interfere with, restrain, coerce or discriminate against the named individual Complainants, or against any of its employes in its employ, and in that regard, Respondent Edwin Olds and Respondent Joint School District No. 1, City of Green Bay, et al, did not commit, and are not committing, any prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

4. That the composition and circulation of a list of named custodial employes, including the identification of a class of employes as, "all hired during walkout", which list identified said custodials as not being members of Local 1672-B, AFSCME, did not constitute, and does not constitute a blacklist violative of Section 134.03, or of any other provision of the Wisconsin Statutes; that the composition and distribution of such a list of non-member custodials by Ann McHugh and Darrel Molzahn was an act connected with the custodial employes' rights of association and consistent with such employes' right of self-organization and affiliation with Local 1672-B, AFSCME, their certified bargaining representative, and in that regard, was an act protected by Section 111.70, Wisconsin Statutes.

5. That Norbert McHugh, Louis Hutzler, Darrel Molzahn, Ann McHugh and Local 1672-B, AFSCME, by either their (its) participation in, or responsibility for, the composition and circulation of the aforesaid list of custodial employes, identified as not being members of AFSCME, did not thereby prevent, or interfere with, any employes of the Respondent in such employes' pursuit of lawful work or employment, and did not thereby, coerce, intimidate or interfere with such employes in the enjoyment of their Section 111.70(2) rights, including their right to refrain from any and all Section 111.70(2) activities within the meaning of Section 111.70(3)(b)1, Wisconsin Statutes, and did not thereby, attempt to induce Respondent Employer to so interfere with such employes' Section 111.70(2) rights within the meaning of Section 111.70(3)(b)2, Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the Respondent Joint School District No. 1, City of Green Bay, et al, its officers and agents, and Respondent, Edwin Olds shall immediately

1. Cease and desist from

(a) Threatening its maintenance-custodial employes with loss of tenure because of their non-coercive acts connected with carrying out their right of association as members of AFSCME, or of any other labor organization, including such non-coercive acts as advising its

members as to which employes of the Respondent School District may be affiliated, and which may not be affiliated, with Local 1672-B, AFSCME; or in any other manner threatening said employes so as to interffere with their Section 111.70(2) rights.

(b) Refusing to give full force and effect to an arbitration provision contained in any existing collective agreement to which it is a party together with AFSCME, or which is contained in a resolution covering wages, hours, and working conditions of its maintenance-custodial employes, which arbitration provision has been adopted by the parties for the final resolution of disputes arising during the term of such a collective agreement or resolution.

(c) Refusing to give full force and effect to the terms of any existing collective agreement, covering its maintenance-custodial employes which by its terms has not expired, which it may have negotiated with AFSCME, or which it may have enacted in the form of a resolution following bilateral negotiations with AFSCME which culminated in an accord over wages, hours and conditions of employment for its maintenance and custodial employes, for a period not yet expired.

(d) Discouraging membership in Local 1672-B, AFSCME, or any other labor organization, by discharging any of its maintenance-custodial employes, or by discriminating against them in any other manner in regard to their hire, tenure or any terms or conditions of their employment.

(e) In any other manner interfering with, restraining or coercing its maintenance-custodial employes, in the exercise of their right of self-organization, and their right to be affiliated with and represented by Local 1672-B, AFSCME, in conferences and negotiations with the Respondent School District, officers and agents on question of wages, hours and conditions of employment.

2. Take the following affirmative action which the Examiner finds will effecutate the policies of Section 111.70 of the Wisconsin Statutes:

(a) Immediately offer to Norbert McHugh, Louis Hutzler, Darrel Molzahn and Ann McHugh, reinstatement to their former positions or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed.

(b) Make whole Norbert McHugh, Louis Hutzler, Darrel Molzahn and Ann McHugh for any loss of pay and other benefits which each aforesaid Complainant may have suffered by reason of the Respondent's discrimination against them, by payment to each said Complainant a sum of money equal to that which each aforesaid Complainant normally would have earned as wages, from the date that each Complainant was discharged, namely, May 12, 1969, to the date of an unconditional offer of reinstatement to each of said Complainants, together

with other benefits due each Complainant for the aforementioned period, less any net earnings which each said Complainant may have received during such intervening period, that they otherwise would not have received as earnings.

(c) Upon the request of Local 1672-B, AFSCME, comply with the arbitration provisions contained in the 1969 Agreement between it and Local 1672-B, AFSCME, AFL-CIO, with respect to the unresolved grievance and claim of AFSCME, that the $100 bonus paid by the Respondent School District to custodians who worked between November 11 and December 2, 1968, was in violation of the terms of the then existing Agreement.

(d) Notify Local 1672-B, AFSCME, that it is willing to proceed to arbitration of the aforesaid grievance and the issues concerning same.

(e) Upon the request of Local 1672-B, AFSCME, as described in 2(c) above, participate with Local 1672-B, AFSCME, in the selection of an arbitrator to hear and decide the aforementioned grievance and the issues concerning same, according to the selection procedure contained in the 1969 collective agreement, or according to an alternate selection procedure mutually agreed to by the parties.

(f) Notify all of its maintenance-custodial employes by posting in conspicuous places, where notices to such employes are usually posted, throughout all of the school buildings operated by the Respondent School District, where all such employes may observe them, copies of the Notice attached hereto and marked "APPENDIX A". Copies of such Notice shall be prepared by the Respondent School District and shall be signed by the President of the School Board and by the Superintendent of Schools of such School District, and shall be posted immediately upon the receipt of the copy of this Order, and shall remain posted for thirty (30) days after its initial posting. Reasonable steps shall be taken by the Superintendent of Schools to insure that said Notices are not altered, defaced or covered by other material

(g) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of the receipt of this Order, of the steps that have been taken to comply therewith.

IT IS FURTHER ORDERED that the complaint filed by Board of Education, Joint School District No. 1, City of Green Bay et al, and Edwin Olds, alleging that Norbert McHugh, Louis Hutzler, Darrel Holzahn, Ann McHugh, and Green Bay Employees, Local 1672-B, AFSCME, AFL-CIO, violated 111.70 (3)(b) and 134.03 be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 25th day of February, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

"APPENDIX A"

NOTICE TO ALL MAINTENANCE-CUSTODIAL EMPLOYES

Pursuant to the Order of an Examiner of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of Section 111.70 of the Wisconsin Statutes, we hereby notify our employes that:

WE WILL NOT discourage membership in Green Bay Employees Local 1672-B, AFSCME, AFL-CIO, or any other labor organization of our employes, by discharging any of our employes, or in any other manner discriminating against them, in regard to their hire, tenure, or any term or condition of their employment.

WE WILL NOT threaten any employe with the loss of tenure for their participation in association with Green Bay Employees Local 1672-B, AFSCME, AFL-CIO, including participating in acts, non-coercive in nature, in the dissemination of information to fellow members of Local 1672-B, AFSCME, AFL-CIO with respect to our employes' extent of membership in such labor organization.

WE WILL NOT refuse to give full force and effect to any existing collective agreement previously negotiated with Green Bay Employess Local 1672-B, AFSCME, AFL-CIO, including arbitration provisions which may be contained therein for the final resolution of disputes arising in the course of its term, including any collective agreement or accord described by the provisions of Section 111.70(4)(i), Wisconsin Statutes.

WE WILL NOT in any other manner interfere with, restrain or coerce our maintenance-custodial employes, in the exercise of their right of self-organization and the right to affiliate with Green Bay Employees Local 1672-B, AFSCME, AFL-CIO, or any other labor organization of our employes, and in the exercise of their right to be represented by Green Bay Employees Local 1672-B, AFSCME, AFL-CIO in conferences and negotiations with the School District, officers and agents on questions of wages, hours and conditions of employment.

WE WILL immediately make whole Norbert McHugh, Louis Hutzler, Darrel Molzahn and Ann McHugh for any loss of pay and other benefits suffered by reason of our unlawful discrimination and interference, restraint and coercion, by paying them the sum of money they normally would have earned in salary and other benefits for the period beginning with the date of their unlawful discharges, to the date of the School District's unconditional offer of reinstatement, less any other net earnings which they may have received, and ordinarily which they would not have received, during this period.

BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY ET AL, GREEN BAY, WISCONSIN

_____
President, Board of Education

_____
Superintendent of Schools

Dated___ _____

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORBERT McHUGH, LOUIS HUTZLER, DARREL MOLZAHN, ANN McHUGH, and GREEN BAY EMPLOYEES, LOCAL 1672-B, AFSCME, AFL-CIO Complainants, -versus- BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY ET AL, GREEN BAY, WISCONSIN, and EDWIN OLDS, SUPERINTENDENT, Respondents.	Case VI No. 12944 MP-63 Decision No. 9095-B
BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY ET AL, GREEN BAY, WISCONSIN, and EDWIN OLDS, SUPERINTENDENT, Complainants, -versus- NORBERT McHUGH, LOUIS HUTZLER, DARREL MOLZAHN, ANN McHUGH, and GREEN BAY EMPLOYEES, LOCAL 1672-B, AFSCME, AFL-CIO, Respondents.	Case VII No. 13098 MP-70 Decision No. 9095-B

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THE PLEADINGS AND CONSOLIDATION OF ACTIONS

A complaint of prohibited practices was filed with the Commission on June 5, 1969, by Norbert McHugh, Louis Hutzler, Darrel Molzahn, Ann McHugh and Green Bay Employees Local 1672-B, AFSCME, AFL-CIO. The answer of the Respondent Municipal Employer was filed on June 23, 1969, which included an affirmative defense treated herein as a counterclaim in the proceeding, Case VII, No. 13098, MP-70. That on June 9, 1969, the Commission noticed the matter for hearing, and on June 18, 1969, appointed the undersigned as an Examiner to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Section 111.07(5). After an initial denial of the Municipal Employer's request for depositions for purposes of adverse and discovery, the Commission in reply to the Municipal Employer's motion of July 7, 1969, issued an Order directing the Examiner to permit the Municipal Employer to take depositions for limited purposes of discovery from deponents, James Miller and Darrel Molzahn, a representative and officer of AFSCME respectively. Hearings in the matters were conducted on July 16, 17 and 18, 1969, August 4, 5, 6, 19, 20, and 21, 1969. In the course of the August 5, 1969 hearing, the Examiner ordered that both actions that were raised in the Municipal Employer's counterclaim, and the Complaint filed by AFSCME, be consolidated

and that the record made in the course of hearing be applicable to both actions, including the exhibits received and voir doir and foundation testimony relating thereto from the deposition proceedings. The parties filed briefs by December 19, 1969.

AFSCME in its complaint alleged inter alia: 1/

> "...the Respondents have engaged in a course of conduct the total effect of which has tended to interfere... with unit employes in the exercise of their rights (Section 111.70(2)) and in some instances tended to discourage membership in Local 1672-B by discriminating in regard to tenure. . . of employment."

AFSCME more particularly alleged in that regard, in paragraph #8 of its complaint as follows:

> "(a) Harassment of Complainant, Norbert McHugh, by investigation into his past activities, making unfounded accusations of misconduct, and publicly accusing him of wrong doing;
>
> (b) Causing Complainants Norbert McHugh and Louis Hutzler to forfeit a day's pay for attendance under subpoena, of the hearing on June 24, 1968, on the representation petition, while other employees of the Board of Education attended the same hearing without loss of pay;
>
> (c) Refusal to sign either of the two 2/ contracts that have been negotiated since Local 1672B has been certified and acting in disregard of the negotiated agreements of the parties in the following respects:
>
> (1) On November 11, 1968, the employer unilaterally made changes in shift assignments and working locations for certain bargaining unit employees not withstanding and contrary to provisions in the Agreement...
>
> . . .
>
> (2) On December 23, 1968, Respondent Board of Education approved and adopted a recommendation of its Property Committee that certain bargaining unit employees be paid $100.00 each as an alleged "adjustment for additional work loads imposed" during the period of November 11, 1968, and December 2, 1968, during which period all of the bargaining unit employees were on strike. . . . The bonus was paid to said non-striking employees notwithstanding and contrary to wage scale and overtime provisions in the agreement of the parties then existing.

1/ AFSCME's complaint is set forth in Appendix B, post., following Memorandum.

2/ The question of whether the Municipal Employer failed to sign its 1968 collective agreement with Teamsters may be background evidence in determining Employer animus against AFSCME, but such independent act, or omission, cannot arguably be violative of 111.70(3)(a) 1 at the instance of AFSCME.

(3) On February 5, 1969, Complainant Local 1672B, by its attorneys, notified the Board of Education that it had decided to submit a grievance relating to the $100.00 bonus incident to arbitration under the negotiated but unsigned agreement...

. . .

(d) Following the strike. . .of the bargaining unit employees in November of 1968, the employer, as a condition of the settlement thereof, insisted that non-union members be entitled to vote on whether or not to ratify the settlement agreement, in disregard of the Certification of Complainant Local 1672B, and in disregard of the exclusive recognition that the Employer had yielded in the agreement.

(e) Suspension and discharge of Complainants, Norbert McHugh, Louis Hutzler, Darrel Molzahn, and Ann McHugh, for being officers of Complainant, Local 1672B, and therefore alleged to be responsible for the circulation and distribution of a list of non-union employees, referred to by Respondent, Edwin Olds, as a 'blacklist'.

(9) The aforesaid conduct of Respondents Board of Education and Edwin Olds, constitutes a violation of the laws of the State of Wisconsin, Sec. 111.70(3)1. and 2." 3/

The Municipal Employer denied in its Answer all of the aforementioned allegations of AFSCME's complaint and pleaded an affirmative defense which is treated herein as a counterclaim, and which reads as follows:

"10. As to Paragraph 8 (e) of the complaint, respondents deny the allegations contained therein, and allege that a black list was circulated and distributed by Green Bay Employees Local 1672B, AFSCME, AFL-CIO, and as the respondents are informed and verily believe, Norbert McHugh, Louis Hutzler, Darrel Molzahn, and Ann McHugh were the officers of Local 1672B at the time of the circulation and distribution of said black list, and that they are, therefore, responsible for the circulation and distribution, all in violation of the Statutes of the State of Wisconsin, Section 111.70 (2) and Sections 111.70 (3) (b) 1. and 2.

. . .

WHEREFORE, respondents demand that the complaint be dismissed as to the respondents and that the complainants be found guilty of violating the Statutes of the State of Wisconsin, Section 111.70 (3) (b) 1. and 2.; that the complainants be ordered to cease and desist from the circulation of the black list; that the complainants be ordered to post copies of the orders of the Commission on all bulletin boards regularly used by the members of the bargaining unit; and for such other and further relief as the Commission deems appropriate under the circumstances."

3/ AFSCME in its pleadings and brief occasionally refers to sub-paragraph (3) 1. and 2. of the Statute as having been violated, but the substance of its pleadings and argument, and from the statute itself, makes clear that AFSCME means Section 111.70 (3)(a) 1. and 2.

FACTS

The Municipal Employer had bargained with a labor organization other than Complainant AFSCME for a substantial period of time from 1962, to June 1968 for which period Teamsters No. 75 was the recognized exclusive bargaining representative of its maintenance-custodial employes. In the year 1967 and 1968 of that relationship, individual-Complainants Norbert McHugh, Hutzler, Molzahn and on occasion Ann McHugh, served as officers and/or employe bargaining-committee-members for the Teamsters. 4/ As a result of an accord reached in late 1966 between Teamsters and the Municipal Employer, the latter enacted an agreement covering wages, hours and working conditions for its custodial employes in the form of a resolution of the School Board. In late 1967 the same parties reached an agreement over most of the terms of a collective agreement for 1968 except over the problem of reassigning custodials, the method to achieve same and the schedule of hours which would obtain in the event the Municipal Employer should convert to P.M. assignments for elementary schools. This problem of assigning custodials to evening hours, to achieve better cleaning, had been an issue between the parties several years before, involving custodials in secondary schools, which subsequently had been resolved through negotiations between Teamsters and the Municipal Employer about the year 1962.

After January 1968, the Teamsters bargaining committee for the custodials and representatives of the Municipal Employer met on two occasions over the question of implementing shift changes and transfers of custodials in the elementary schools. The last such meeting, by the preponderance of the evidence, took place just prior to Memorial Day 1968. There is a conflict in testimony between Dallich's version as to what the instructions of the Teamster bargaining committee were relative to Dallich drafting a plan to implement shift changes, and Hutzler's and Giese's versions as members of the Teamster committee which is alluded to in Findings of Fact, paragraph #7.

The Examiner does not find it necessary to resolve said conflict in light of evidence relating to an overt act of the Municipal Employer on September 16, 1968, Findings of Fact, paragraph #12., and for the additional reason, that the comparative history of Teamster versus AFSCME bargaining with the Employer over shift changes, shall be considered herein only to determine the question of Employer animus toward AFSCME, as an ingredient of a possible 111.70(3)(a) 2 violation.

On May 22, 1968, AFSCME filed a representation petition with the Commission claiming majority status in the maintenance-custodial unit. The Commission set hearing in the matter for June 24, 1968. 5/ After its Direction of Election, the Commission conducted the election on September 25, 1968, the results indicating that AFSCME prevailed over the intervenor, Teamsters, as the designated majority representative of the custodial employes. The Commission on October 10, 1968, issued its certification of AFSCME as the exclusive bargaining representative of said custodials.

4/ Incidents arising out of Norbert McHugh's role as a Teamster committee member and which are related to certain allegedly violative conduct of the Municipal Employer, occuring over the period January to October 11, 1968, are set forth in Findings of Fact, paragraphs #8, #9, and #11, and are discussed in the Memorandum, post., under subheadings: Bunker Incident, Principal Webster School Incident and October 10, 1968 Meeting Accusations Against Norbert McHugh.

5/ The facts relating to Norbert McHugh and Hutzler having appeared at said hearing, under subpoena, during working hours, are set forth in Findings of Fact, paragraph #10.

Prior to the aforesaid election and on September 16, Dallich with Olds' approval submitted his draft of prospective changes in hours and job assignments for custodials to the Property Committee of the School Board, for its adoption. The Property Committee approved same and set forth in its topical summary of the minutes of said meeting the following:

> "5. Custodial Reorganization.
>
> Mr. Olds reviewed the need for the performance of custodial work during the evening hours in the elementary schools. Mr. Dallich outlined the reorganization plan and personnel transfers which would be required to institute night shifts in all of the schools.
>
> . . .
>
> A meeting will be arranged with the necessary representatives to implement the program." (emphasis supplied).

The Municipal Employer, on Octber 31, 1968, directed copies of a memorandum to its custodial employes setting forth such transfers and schedule changes which reflected the Property Committee's action of September 16 and advised therein, that the changes would be made on November 11, 1968.

When Miller, representative of AFSCME, learned of such plans for changing elementary hours he contacted Dallich and advised Dallich, that as newly certified bargaining representative, AFSCME had no previous opportunity to discuss the changes with the Municipal Employer and inquired whether the implementation date could be postponed. Dallich in substance advised Miller of such a possibility, but that Miller should contact the Labor Negotiator. Miller reached VanderKelen on or shortly before November 8, 1968, and was referred by VanderKelen to Olds for a decision as to whether the shift changes might be postponed. On November 9, 1968, Miller reached Olds by telephone and requested that the Municipal Employer meet with AFSCME to discuss implementation of the shift changes before they were to be placed into effect. Olds declined to meet and negotiate with AFSCME prior to making the planned changes on November 11, 1968. On Sunday, November 10, 1968, in response to the Employer's declination in that regard, AFSCME's membership voted to go out on strike. On Monday, November 11, 1968, substantially all of the custodial employes and AFSCME members participated in a work stoppage, otherwise proscribed by Section 111.70(1) of the Act. At least two AFSCME members abandoned the strike and other non-member custodials remained on the job. The Municipal Employer also hired a number of strike replacements, it having mailed letters of termination to each of the striking custodials. On November 13, 1968, AFSCME filed a complaint of prohibited practices with the Commission charging that the Employer's unilateral action violated the Act. The Municipal Employer filed a demurrer to said complaint. On December 2, 1968, the parties reached a settlement ending the work stoppage and also reached a collective agreement for 1969 covering custodial employes, and shortly thereafter at AFSCME's request, its complaint was dismissed. The record discloses no written accord, as part of either the strike settlement agreement or the 1969 collective agreement, with respect to any conditions, which if broken, would permit the Municipal Employer to vitiate the agreement. There is testimony of the Labor Negotiator with reference to the existence of some condition, namely, that at time of settlement, the parties made mutual pledges of "no reprisals", which testimony is covered in discussion to follow under the sub-topic "Repudiation of the Collective Agreement".

Olds on the day of the strike settlement directed a communication to all of the custodial employes, both strikers and non-strikers, setting forth a summary of the settlement terms, 6/ and that the parties had reached an agreement on the terms of a 1969 contract. (See Appendix F, post., following Memorandum) The only drafting problem of any significance remaining after December 2, 1968, related to a matter where the parties had already reached an agreement on principle concerning management rights, which was resolved by Oberbeck's written submission of March 31, 1969. (See Findings of Fact, paragraph #19.)

On December 23, 1968, the Municipal Employer in unilateral action, authorized the grant of a $100 bonus to some eleven (11) employes included in the bargaining unit, who had remained on the job at the time of the strike on November 11, 1968. After Olds had rejected AFSCME's grievance, challenging the Employer's grant of the $100 bonus, Counsel for AFSCME, on February 5, 1969, directed a letter to the School Board, wherein he advised, that AFSCME intended to proceed to arbitration with the grievance, which challenged the $100 bonus, as set forth in Step 5 of the collective agreement. The Labor Negotiator, VanderKelen, in a letter of reply, denied the existence of the 1969 collective agreement by the use of the following verbiage contained therein:

> "Your letter referred to Step 5 of the grievance procedure in the collective bargaining agreement. Our present agreement does not have this number step, nor does it have provision for an arbitration representative."
>
> (AFSCME's request for arbitration and VanderKelen's reply are set forth in Appendices G & H, respectively, post., Memorandum)

On April 30, 1969, at a public meeting of an Advisory Committee of the Common Council of Green Bay, called for the purposes of eliciting citizens' positions over the efficacy of changing the method of selection of School Board members, VanderKelen pointed out to the some thirty (30) other citizens present, that several AFSCME members at the meeting were members of a group who had previously engaged in an illegal work stoppage. VanderKelen went on to state a question to the effect, did such individuals and others present have an interest in education or did they have a vested interest in mind?

Ann McHugh received a request from one Germain Baumgart on April 21, 1969 that the Union provide all of the members with a list of AFSCME members. She advised A. McHugh that such information would be helpful in avoiding confusion such as she and two other female members of AFSCME experienced at a Ripon regional conference of school employes the previous weekend, when some unknown person confronted some of their fellow-riders, in the absence of the girls, and charged that the men were transporting "scabs".

Eva Allen in her testimony could recall little or nothing concerning the Ripon trip, or of the conversation of her fellow (male) passengers concerning the label, "scab", bestowed on one or all of the girls. Discussion as to any actual or latent conflict in the aforesaid testimony is covered in material to follow under the sub-heading, Composition and Circulation of the List of Non-Members.

6/ There is a good deal of testimony with regard to the exact terms of seniority credits for reinstated strikers vis a vis the seniority of hired replacements. Apart from possible conflict in that regard, said question involves a potential controversy over the interpretation of the terms of the 1969 collective agreement, the determination of which shall not be made in this forum.

A. McHugh obliged Baumgart's request by preparing a list of non-members to which she appended a short phrase after the last name, "all hired during walkout". A. McHugh and Molzahn collaborated in distributing the lists, together with the regular monthly meeting notices for May 1969, to the twenty (20) some schools where AFSCME members were employed. (See Findings of Fact, paragraph #22.) Many of the lists of non-members so distributed contained the slight change suggested by Molzahn, which indicated that the group, "all hired during walkout", was an additional number of employes, though not identified, over and above the named individuals appearing on the list.

Such a list was discovered at Langlade School by VanderKelen and a School Board member on May 2, 1968. From the statement of William Ernst, an AFSCME member and maintenance employe who was familiar only with the receipt of the list, the Municipal Employer determined that the meeting notice and attached list of non-members came from AFSCME. Representatives of the Municipal Employer conferred about the matter early in the following week and concluded therefrom that the purpose for circulating such lists of non-members was to effectuate a "selecting out" of non-member custodials for special avoidance. The Municipal Employer further concluded that given such a probable effect arising out of its circulation, that the list constituted an illegal "blacklist". Olds on May 9, 1969, mailed identical letters of termination to the four AFSCME officers. (Full text of letter to N. McHugh, Appendix D, post., following Memorandum)

On May 19 and 28, 1969, representatives of the Municipal Employer and AFSCME met over the question of the four discharges, wherein the School Board sought to utilize the forum to secure information from AFSCME and its officers as to the precise purpose of the list, and the persons responsible for its circulation, if not the four officers. AFSCME sought to determine the propriety of the discharges through the grievance and arbitration machinery of the 1969 collective agreement, which approach was denied by the School Board to the point that representatives of the Municipal Employer denied the existence of a binding collective agreement. The parties again met on June 6, 1969, but became enmeshed over the propriety, or "the breaking of faith", in Oberbeck's reference to non-members on the Langlade list as "scabs". Contemporaneous with the June 6, 1969, meeting, VanderKelen had recommended in a June 5, 1969 letter, Olds having affirmed, that the Municipal Employer should decline to honor the 1969 collective agreement. Said letter was written only two days after the Municipal Employer had invited AFSCME to meet and discuss the question of the discharges pursuant to the grievance machinery of said agreement. (The conduct of the parties covering the period May 19 to June 6, 1969, is set forth in Findings of Fact, paragraphs, #24 and 25). Complaint of prohibited practices was filed by AFSCME on June 5, 1969.

PERTINENT STATUTES

111.70

(2) RIGHTS OF MUNICIPAL EMPLOYES. Municipal Employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their Municipal Employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

111.70

(3) PROHIBITED PRACTICES. (a) Municipal employers, their officers and agents are prohibited from:

1. Interfering with, restraining or coercing any municipal employe in the exercise of their rights provided in sub. (2).

2. Encouraging or discouraging membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

(b) Municipal employes individually or in concert with others are prohibited from:

1. Coercing, intimidating or interfering with municipal employes in the enjoyment of their legal rights including those set forth in sub. (2).

2. Attempting to induce a municipal employer to coerce, intimidate or interfere with a municipal employe in the enjoyment of his legal rights including those set forth in sub. (2).

111.70

(4) POWERS OF THE BOARD. The Board shall be governed by the following provisions relating to bargaining and municipal employment:

(a) Prevention of prohibited practices. Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter.

111.70

(1) Strikes prohibited. Nothing contained in this subchapter shall constitute a grant of the right to strike by any county or municipal employe and such strikes are hereby expressly prohibited.

111.70

(5) PROCEDURES. Any municipal employer may employ a qualified person to discharge the duties of labor negotiator and to represent such municipal employer in conferences and negotiations under this section. In cities of the 1st class a member of the city council who resigns therefrom may, during the term for which he is elected, be eligible to the position of labor negotiator under this subsection, which position during said term has been created by or the selection to which is vested in such city council, and s. 66.11(2) shall be deemed inapplicable thereto.

111.07

(4) Within 60 days after hearing all testimony and arguments of the parties the board shall make and file its findings of fact upon all of the issues involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination by it of any controversy before it the board may, after hearing, make interlocutory findings and orders which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committeed, suspend his rights, immunities, privileges or remedies granted or afforded by this subchapter for not more than one year, and require him to take such affirmative action, including reinstatement of employes with or without pay, as the board may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

111.07

(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific

act or unfair labor practice alleged.

111.06

(2) It shall be an unfair labor practice for an employe individually or in concert with others:

. . .

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance.

134.02

Blacklisting and coercion of employes. (1) Any 2 or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employe by threats, promises, circulating blacklists or causing the same to be circulated, or who shall, after having discharged any employe, prevent or attempt to prevent such employe from obtaining employment with any other person, partnership, company or corporation by the means aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employe or any employe who has voluntarily left the service of his employer, or circulate a blacklist of such employe to prevent his obtaining employment under any other employer, or who shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by fine of not more than $500 nor less than $100, which fine shall be paid into the state treasury for the benefit of the school fund.

(2) Nothing in this section shall prohibit any employer of labor from giving any other such employer, to whom a discharged employe has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for such discharge, when requested so to do by such employe, the person to whom he has applied for employment, or any bondsman or surety; but it shall be a violation of this section to give such information with the intent to blacklist, hinder or prevent such employe from obtaining employment; neither shall anything herein contained prohibit any employer of labor from keeping for his own information and protection a record showing the habits, character and competency of his employes and the cause of the discharge or voluntary quitting of any of them."

134.03

Preventing pursuit of work. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent

any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage worker, or who shall attempt to so hinder or prevent shall be punished by fine not exceeding $100 or by imprisonment in the county jail not more than 6 months, or by both fine and imprisonment in the discretion of the court. Nothing herein contained shall be construed to prohibit any person or persons off of the premises of such lawful work or employment from recommending, advising or persuading others by peaceful means to refrain from working at a place where a strike or lockout is in progress."

POSITIONS OF PARTIES

Municipal Employer

The Municipal Employer contends that the evidence in the record reveals no believable explanation for the composition and circulation of the list of non-members. It further suggests that the reasons advanced for distributing the list from the testimony of Holzahn and Ann McHugh, namely, that AFSCME members could utilize said list to distinguish members from non-members and thereby avoid other misunderstandings, is not persuasive since the remaining testimony makes clear that such a list would have no productive benefit in aiding employe-members to readily identify other employes in the class, "all hired during walkout".

The Municipal Employer argues that the special label appearing on the list, namely, "all hired during walkout", together with its publication, constituted a deliberate attempt to single out such individuals as a class for the purpose of interfering with their right to either join, or not to join, a union; that said act amounted to a threat to hinder non-members in their pursuit of lawful work. The Municipal Employer argues that the Union is obligated to represent all of the employes in the bargaining unit for which it was certified as representative. AFSCME was functioning as a union when it distributed its regular monthly meeting notices, with the attached list of non-members. The four employes who were the AFSCME officers, were responsible for the procedures and the acts of the Union, including the responsibility for any illegal conduct, or for the perpetration of unprotected activity, in conjunction with the circulation of the list. Given the fact that AFSCME was duty-bound to represent non-members employed in the custodial unit, the distribution of a list of non-members was an act which marked such employes for special avoidance and therefore constituted a blacklist. It contends that there is authority for the proposition that a "blacklist is a part of the paraphernalia of a strike". A strike under 111.70 is not protected activity, so that it follows that paraphernalia which goes along with a strike, namely, circulation of a blacklist, is unprotected activity for which AFSCME officers were responsible. The Employer contends that the distribution of such a blacklist constitutes a threat and intimidation of non-members which would hinder such employes "in continuing in lawful work", in violation of Wis. Stats., 134.03. The evidence indicates that the only basis for its discharging the AFSCME officers, was for their distribution of the blacklist. The Municipal Employer urges that its discretion to choose the penalty for such an engagement in unprotected activity should not be abridged.

With respect to much of the activity which occurred prior to December 2, 1968, the Municipal Employer points out that a good deal of such activity relates to AFSCME charges that the Employer failed to sign

collective agreements, or instituted shift changes without first bargaining. Other activity relates to its alleged failure to abide by terms of certain collective agreements. In either instance such conduct is either related to the bargaining process or arguably involves a breach of contract. On either count, asserts the Municipal Employer, there exists no claim for relief under 111.70 in the form of a "prohibited practice" before the Wisconsin Employment Relations Commission, whether it be in the form of a "refusal to bargain" charge or one grounded in breach of contract. This holds true irrespective of AFSCME's "total conduct" theory on the basis of which it asserts an "interference and coercion" violation by the Employer involving matters not otherwise sanctioned by 111.70. The Municipal Employer urges that even assuming sufficient proof in that regard, the authorities make clear that the administrative remedy for such conduct is exclusively fact finding.

With respect to several other allegations contained in the complaint, the Municipal Employer points out that the record discloses:

> that it did not harass N. McHugh or publicly accuse him of misconduct as alleged in the complaint;
>
> that though all the AFSCME strikers, including the individual Complainants, were discharged on November 13, 1968, they were all rehired on December 2 as part of the strike settlement, which included agreement by the parties that all past differences were settled;
>
> that AFSCME in the first days of strike, filed a complaint with WERC charging that the School Board's implementation of the shift changes on the previous November 11, violated the Statute;
>
> that though said complaint was dismissed by WERC soon after strike settlement, the Union in the instant action, seeks to revive the very same issues;
>
> that with regard to their pay loss shortly after the June 1968 election hearing, neither N. McHugh or Hutzler filed a grievance, and neither individual complained to supervision that he lost a day's pay for attending said hearing under subpoena; that the record further indicates that the only other employes attending said hearing were supervisors;

With respect to the merits of AFSCME's charge that the Employer's shift and assignment change of November 11, 1968, was an act violative of 111.70(3)(a)1, the record indicates that its assignments of custodials were effectuated as a result of a previous agreement between management and the then existing bargaining representative for its custodial employes, whose committee members instructed Dallich to make the necessary changes and assignments.

The Municipal Employer further contends that AFSCME and management agreed to the basics of a collective agreement on December 2, 1968, permitting the strikers to return to work, which agreement the School Board had not formally signed because of minor objections to wording. With reference to the question of the $100 bonus authorized by formal action of the School Board in late December of 1968, notice of such

meeting was furnished to the Union and at no time had management ever previously promised the recipients that they would receive such a grant, but in any event, the monies were paid to employes who remained on the job over the period of the strike, irrespective of their union status.

Other incidents underlying AFSCME's allegations of "coercion" under the Act involve: the Bunker incident, where the testimony clearly reveals that Olds only made inquiry of a supervisory employe concerning a prior confrontation with N. McHugh, Olds having never reproached N. McHugh over the matter; and in regard to the dialogue between Olds and N. McHugh over the Principal (Webster School) incident, about which N. McHugh testified that in fact Olds never accused him of dishonesty or wrongdoing with regard to the matter.

The Municipal Employer requests dismissal of the complaint filed by the individual employes and AFSCME, and further prays for an order directing AFSCME to cease and desist from the circulation of a blacklist.

AFSCME's Position

The preparation and the distribution of the list of non-members by A. McHugh and Molzahn was a noncoercive act of speech, argues AFSCME, and as such it is constitutionally protected. The verbiage typed on the list asserted a fact, namely, that fourteen (14) custodial employes together with a group of unnamed employes hired during walkout, were not members of AFSCME. An instruction appended below the enumerated names made it clear that the communication was directed only to union members. AFSCME contends that the preparation of the list was related to the associational incidences of the Union members' lives. It points out that an additional fact was stated in the list, that it was issued to clear up a misunderstanding. The misunderstanding was directly connected with the members' choices in making day to day associations. In order to avoid future confusion of the variety of the Ripon convention, Ann McHugh, in response to a request, sought to inform her fellow members, as to the extent of the custodials' non-affiliation in the Union. This was an act consistent with the employes' right to associate and carry on their mutual interests as members of a union. AFSCME contends that such an act of speech does not lose its prima facie protection of the First Amendment merely because it occurs in a labor relations context. On the contrary, the protection extends to publicizing facts relating to union membership, and only if such speech goes beyond the bounds of persuasion, as when it takes on the character of coercion or intimidation, may it be proscribed by statute and administrative decree. Here, AFSCME points out, there is not a scintilla of evidence to indicate that the circulation of the list disrupted the work-place, or adversely affected the maintenance of the school system. Witnesses called by the Municipal Employer, including a supervisor of the custodial staff, could not recount any incident attributable to the list, which had an adverse affect on operations. Management representatives in testimony alluded to their belief that the purpose of the list was to cause special avoidance, but the record is devoid of any instances of any AFSCME members engaging in such conduct. In fact, argues AFSCME, Olds' testimony makes clear that as of the date of the four (4) discharges, management had no knowledge of any incidents of avoidance or disruption, but proceeded on their belief that the list was inherently a blacklist. AFSCME contends that the circulation of the list was not coercive per se, it was not accompanied by coercive activities, and therefore it was an act in furtherance of the members right of association, protected as such constitutionally and as an exercise of their 111.70(2) rights.

AFSCME points out that the word "blacklist" is a word of art in the parlance of labor relations. It denotes labor or management bringing economic pressure on the other through its usage, or it may be used for purposes of coercion. The list circulated here was not used to exert economic pressure. It contained no threats, nor any other verbiage which could be deemed coercive. There is no evidence of any intent to affect the employment status of the individuals listed, nor any overt acts by AFSCME members to hinder the pursuit of work.

AFSCME points out that the only reason ascribed by the Employer for the discharges of the four officers was because of their incumbency as AFSCME officers, responsible for circulating a so-called blacklist. Management acknowledged that each of the officers performed their work satisfactorily. Apart from management's pretextual reasons recited at the time for the discharges, the total conduct of the Municipal Employer also indicates that one of the motivating factors for the discharges, was the Municipal Employer's animus towards the employes for their union activities.

In that regard, AFSCME argues that the Employer's several acts of interference and discrimination indicate the Municipal Employer's hostility against AFSCME and its officers and animus against employes because of their exercise of their 111.70(2) rights, which conduct includes the following:

> that the Municipal Employer engaged in activities of an intimidating nature when in the Spring of 1968 Olds approached Bunker, a foreman, and inquired about N. McHugh's having had a dispute with Bunker some ten (10) years before, a stale incident which the foreman had long forgotten; that Olds should have known that his probe of a stale incident would get back to N. McHugh and that the inference is inescapable that Olds was searching for something to hold against N. McHugh;
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> that Olds, after hearing N. McHugh's claim in a bargaining session that one of the Principals had criticized the existing arrangement for night shift custodial service, engaged in protracted telephonic interrogation of N. McHugh to get to the bottom of the matter. He went so far as to summon N. McHugh by letter to a meeting with the Principal and Olds, indicating that the result of same could prompt a recommendation to the School Board; that upon learning that N. McHugh had corroboration for his representations, Olds dropped the matter, but neverthelss Olds' conduct manifested an attempt to pin a misconduct tag on N. McHugh;
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> that after AFSCME had defeated the incumbent Union in the September 25, 1968 election and just before issue of the WERC certification, representatives of the Municipal Employer summoned N. McHugh to a meeting, the Employer having even invited the representative of the deposed Teamsters to attend, in the course of which management leveled two accusations against N. McHugh and the representative of the deposed Union also upbraided him over some alleged misconduct; that no proof was proffered by management in the face N. McHugh's denials of any misconduct, but nevertheless the Municipal Employer made the unsupported accusations for the coercive and intimidating effect it would have upon N. McHugh;
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> that in the course of a public hearing of a special committee of the Green Bay City Council, the Labor Negotiator for the Municipal Employer engaged in public criticism of several AFSCME officers and members who had done nothing to provoke the outburst; that the Negotiator pointed out to the thirty (30) citizens present, that the AFSCME group "had walked off the job last year" and questioned the legitimacy of their interest in the matter before the Committee; that such public criticism

would necessarily have a chilling effect on the AFSCME members present and it also reflected the Municipal Employer's animus toward said AFSCME members;

that prior to the date of issuance of the four (4) letters of termination to AFSCME officers, the Municipal Employer tipped off a local reporter as to the background behind the action, and as to the details of the termination letters, the reporter's timely story even reflecting a quote from Olds' to the effect that posting of the list was "terribly serious"; that the Employer's eagerness to release its prospective action, and so characterize the conduct of the dischargees, at a time when Olds in fact had no information concerning the circumstances surrounding the making and circulation of the list, manifested its animus toward AFSCME officers;

That in addition to its acts of intimidation, the Municipal Employer exhibited disdain for the representative status of AFSCME, and general disdain for its union contracts:

by refusing to meet with AFSCME after Miller's request to Olds for such meeting prior to placing the shift changes into effect on November 11, 1968, such refusal having occurred after months of negotiations between management and the Teamsters committee; that the Employer's declination also came after its Property Committee, by action described in published minutes, had approved Dallich's shift reorganization with the expectancy that "a meeting will be arranged with the necessary representatives to implement the program"; that the Union's contention, regarding the instructions which custodial bargainers may have given Dallich in the negotiation session of late Spring 1968, regarding drafting of shift changes, is the most probable;

that the evidence supports an inference that the Municipal Employer, after much prolonged negotiations with a predecessor Union over custodial evening assignments, decided to "drop a bomb" on the newly certified AFSCME, by presenting the custodials with an accomplished fact without negotiations, an act which seriously undermined AFSCME;

that the initial and more believable testimony of Olds confirms the contents of his letter of December 2, 1968, that the Municipal Employer and AFSCME had reached an accord on the terms of the 1969 collective agreement, and that such an agreement was the quid pro quo for AFSCME members returning to work; that a mere language clarification of one provision remained in limbo, involving a principle already agreed to, which was resolved by Oberbeck's correspondence to Doepke on March 31, 1969; that Olds, without inquiring as to which acts may have vitiated the contract, accepted VanderKelen's recommendations on two occasions, namely February 10 and June 5, 1969, that the School Board should not recognize the existence of a binding collective agreement with AFSCME, inspite of Olds' memo to the employes in December 1968; that Olds, in later testimony in course of the hearing, sought to hedge on his earlier acknowledgment of the existence of a 1969 agreement, and VanderKelen's testimony contains several contradictions as to just which contract he would acknowledge was controlling as of February 10, 1969, or which contract applied just prior to his June 5, 1969 letter, when he repudiated the 1969 agreement.

that the Municipal Employer unilaterally authorized the grant of a bonus to a limited group of custodials employed in the unit, who worked throughout the walkout, without negotiating a change in their wages with AFSCME; that subsequently it refused to process a grievance over the matter to arbitration on the grounds of the Labor Negotiator's opinion that no existing collective agreement provided for such an obligation;

that the Municipal Employer, after having first declined AFSCME's request of May 19, 1969, to dispose of the discharge grievances of AFSCME officers according to the grievance procedure of the 1969 agreement, then invited AFSCME to proceed to so handle said grievances at a meeting scheduled for June 6, 1969; that prior to such meeting, VanderKelen, with Olds approving, directed a letter to the School Board recommending that a 1969 collective agreement not be approved, on the pretextual grounds that the so-called moral agreement of December 2, 1968, should not be honored because of the existence, in the Negotiator's terms, of a "pattern of pressure politics and discriminatory practices against a minority of workers"; that VanderKelen contrived in testimony to provide substance to the matters raised in his letter repudiating the contract, but AFSCME urges that he resorted to an absurd list of generalities, but yet was unable to supply specifics which contrasted to his earlier testimony regarding the basis for his letter, where he indicated that he had no particular individuals in mind.

AFSCME further contends that the Municipal Employer engaged in other discriminatory activity:

by its denial of a day's pay to Hutzler and N. McHugh for the time spent at a representation hearing under subpoena contrary to a practice to maintain earnings of employes participating in labor relations meetings; by its payment of a $100 bonus to strikers after the strike settlement, as a reprisal against striking AFSCME members;

AFSCME argues that the aforementioned conduct constitutes independent acts of interference and/or discrimination, but that in the alternative, the total conduct of the Municipal Employer should be found violative of Section 111.70(3)(a) of the Act. It urges in its prayer for relief, that in addition to a finding that the Municipal Employer violated 3(a)1 and 2 of the Act, it seeks reinstatements and a "make-whole" order for the four (4) individual Complainants, a day's pay for the two officers for the discriminatory deprivation of wages for attending a hearing, an order directing payment of $100 bonus to all employes, an order compelling the Municipal Employer to approve the collective agreement and a cease and desist order against further acts of the Municipal Employer which would tend to interfere with its employes' 111.70(2) rights. AFSCME recognizes that some of the Employer's violative conduct arises in the context of bargaining and further acknowledges that 111.70 contains no sanctions against an independent "refusal to bargain". However, it asserts that the total pattern of conduct here evinces an Employer intent to interfere and coerce its employes and undermine the Union. AFSCME contends that though the WERC has held 7/ that the municipal act contains no "8(a)5" type sanction (Federal Act; equivalent under Peace Act - 111.06(1)(d)),

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7/ Citing: City of New Berlin, (7293) 3/66; LaCrosse County, (7077-A) 6/67; see also Milwaukee Board of School Directors, (6883-A) 3/66; City of Milwaukee, (8410) 2/68; Wauwatosa Board of Education, (8319-C) 7/68; and Joint School District #8 (Madison) v WERB, 37 Wis. 2d 483, 489, (1967).

nevertheless the legislature did not intend to narrowly limit the traditional scope of the interference and coercion provision. (Peace Act 111.06(1)(a); Municipal Act 111.70(3)(a)1.) AFSCME further requests that the complaint of the Municipal Employer with regard to the claimed circulation of a blacklist, alleging violations of Sections 111.70 and 134.03, be dismissed.

ANALYSIS AND CONCLUSIONS

CONDUCT OF MUNICIPAL EMPLOYER, ALLEGED TO BE ACTS OF INTERFERENCE OR DISCRIMINATION, NOT VIOLATIVE OF 111.70(3)(a)1 AND 2

Bunker Incident

The record discloses that in the Spring of 1968, Olds, for some unknown reason, in the course of a chance meeting with Bunker, a foreman and non-unit employe, inquired as to whether N. McHugh had ever ordered Bunker to leave a school building. Bunker related that it was a long-forgotten matter, but affirmed that such a confrontation had occurred. There is no evidence that Olds should have expected Bunker, a supervisory employe, to inform N. McHugh concerning Olds' interest in the very stale incident. Similarly there is no evidence that Olds even questioned or reprimanded N. McHugh about the incident or that he directed subordinate supervision to make particular note of the matter for McHugh's personnel file. The only possible inference which can be drawn from the evidence is that Olds engaged in a mild rebuke of Bunker. Therefore, the Examiner has not considered the matter as part of the total conduct of the Municipal Employer which may otherwise constitute interference or discrimination under the Act.

Principal (Webster School) Incident

N. McHugh participated as an employe committee member of the Teamster bargaining team in the period January to June 1968. In the course of one such bargaining meeting between representatives of the Municipal Employer and Teamsters, the topic of evening custodial assignments in elementary schools occupied the negotiators, N. McHugh having informed the management team that one of their own Principals had advised him that a night shift assignment of a custodial was not working in that Principal's school. The record discloses that Olds, within a few days of said bargaining session, telephoned N. McHugh and expressed the desire to "get to the bottom of the matter". Olds shortly thereafter, in a letter delivered by a foreman, summoned N. McHugh to a meeting with the Principal and Olds, the evidence supporting an inference that Olds planned an interrogation of N. McHugh outside the format of normal bilateral negotiations, to determine the verity of N. McHugh's representations vis a vis a possible explanation by the Principal. The record further discloses that N. McHugh telephoned Olds on the same day that said letter had reached him, and advised Olds that a witness could corroborate his previous representations. The meeting was thereupon canceled and the matter dropped.

The preponderance of the evidence further discloses that the last such bargaining session between Teamsters and the Municipal Employer over the question of evening hours for custodials, occurred prior to Memorial Day 1968. Olds' letter arranging for the interrogation, the telephone call of N. McHugh and the cancelation of the meeting by Olds, all occurred on a Friday, from the uncontroverted testimony of N. McHugh which is given credence. The evidence further convinces the undersigned that the matter was set to rest on said Friday, which Friday could not have occurred on a date later than May 31, 1968, a point in time more than one (1) year prior to the filing of AFSCME's complaint herein.

The Examiner concludes that AFSCME does not have a right to proceed, by force of Sections 111.07(14) and 111.70(4)(a), for the purposes of proving that Olds' aforesaid conduct, either independently, or together with the Employer's overall conduct, violates Sections 111.70(3)(a)1 or 2. However, 111.07(14) is not a rule of evidence, so that the Examiner is not precluded from considering whether Olds' attempt to arrange for said interrogation may indicate animus by the Municipal Employer against a bargaining committee representative of the custodials because of his zealous pursuit of the right to be represented in conferences and negotiations.

October 10, 1968 Meeting, Accusations Against Norbert McHugh

The record discloses that representatives of the Municipal Employer met with N. McHugh and James Miller, AFSCME Representative, at a time subsequent to AFSCME's designation as "majority representative", but just prior to its certification as exclusive bargaining representative of the custodials. Perhaps, in an effort to avoid circumventing the officially recognized majority representative, a representative of the Teamsters was also invited to participate. Olds and VanderKelen propounded questions to N. McHugh which reasonably could be deemed accusatory. The Municipal Employer accepted McHugh's denials and indicated the matters were dropped. However, there is no evidence of any Employer threats or intimidation, and unlike the planned interrogation of N. McHugh involving the Principal incident, the Municipal Employer gave N. McHugh the opportunity to have a representative present throughout the dialogue. Contrary to AFSCME's claim, there is insufficient evidence to support an inference that the Municipal Employer sought, through the aforesaid questioning, to "hang a misconduct tag" upon McHugh. The Examiner concludes that the Municipal Employer, by the conduct of its representatives in the course of the October 10, 1968, meeting, did not commit any violation of Section 111.70 of Wisconsin Statutes.

Coverage by Local Reporter of the Prospective Discharge Action To Be Taken By the Municipal Employer

AFSCME contends that the Municipal Employer's permitting a local reporter the opportunity to gather the details of the then pending discharges of four (4) custodial employes at least a day in advance of the termination letters, amounted to an act of intimidation violative of 111.70(3)(a)1. The record indicates that the story broke on the day after the termination letters were mailed. There is no evidence to support an inference that the Municipal Employer arranged for a press release, or a news tip, in order to intimidate AFSCME members or officers. In determining the legal propriety of the Municipal Employer's conduct, the standard against which it is to be measured is not whether such conduct represents a prudent exercise of management's discretion in labor relations or personnel matters. Evidently, unlike many governmental bodies involved in matters of disciplining public employes, the Municipal Employer here did not choose to take advantage of the exemptions of Section 14.90(3)(b), which permits a governmental body to withhold the details of ongoing deliberations where such body is "considering employment, dismissal . . . or discipline of any public employe . . . or the investigation of any charges against such person . . ." The Examiner concludes that there is no evidence to support an inference that the aforementioned conduct was an act of intimidation violative of 111.70(3)(a)1 of Wisconsin Statutes.

Loss of Pay for N. McHugh's and Hutzler's Attendance, Under Subpoena, at 1968 Representation Hearing

The record discloses that N. McHugh and Hutzler were the only unit employes attending the representation hearing on June 24, 1968.

At least two supervisory employes also attended said hearing. Assuming that the Municipal Employer maintained the salary of the supervisors for their attendance at hearing, its disparate treatment of the two (2) unit employes in reducing their wages, does not necessarily constitute a discriminatory deprivation within the meaning of 111.70(3)(a)2. Contrary to AFSCME's contention, there is no evidence that the Municipal Employer had a policy of maintaining earnings of unit employes for their attendance at hearings involving employment relations matters. Neither of the Complainants reported to work on the morning of the hearing, but both evidently presumed that they could absent themselves for three (3) hours in the morning and appear at the hearing at 10:00 a.m. without suffering any wage loss. The Examiner concludes that the aforesaid deprivation of one day's earnings does not constitute discrimination within the meaning of Section 111.70(3)(a)2 of the Wisconsin Statutes.

Unilateral Shift Changes and Custodial Assignments of November 11, 1968

The record discloses that N. McHugh, Hutzler and on occasion Giese, and Molzahn, then acting as members of the Teamster bargaining committee, had met twice between January and May 30, 1968, with representatives of the Municipal Employer to discuss the question of changing hours of custodials to give more nighttime coverage in the elementary schools. Without crediting or discrediting the testimony of Hutzler or Dallich, concerning the last such meeting which took place prior to the filing of AFSCME's representation petition in June 1968, there is conclusive evidence that the Teamster Committee invited Dallich to draw up a workable schedule on shift assignments for elementary schools. The conflict lies as to just how definitive each side became at that meeting, concerning the finality of Dallich's prospective schedule vis a vis the quality of its being executory and subject to further negotiations with representatives of the custodial employes. The record indicates that up to that time the Municipal Employer and the bargaining representative for the custodials had a history of negotiating over shift changes affecting custodial assignments for evening hours, including a bilateral agreement in 1962 or thereabout, with respect to such assignments for high schools. The Teamster and Employer negotiating committees had engaged in protracted negotiations in the course of 1967 and part of 1968 over the prospects and details of such assignments for custodials in the elementary schools.

After the last such bilateral negotiation between Teamsters and the Municipal Employer, AFSCME's petition for representation election was processed to the point that an election was directed for September 25, 1968.

The Examiner does not find it necessary to resolve said conflict, as to just what instructions may have been given to Dallich at the May 1968 meeting because of the presence of other significant facts. The record discloses that on September 16, 1968, the Property Committee of the Municipal Employer considered Dallich's proposed schedule, the minutes of which were published. Just prior thereto, from the evidence in the record, Dallich conferred with Olds over the schedule to be submitted to the Property Committee. From Dallich's own testimony the School Board, many months before, had given the Administration the authority to work out the details and timetable for such changes. From conclusive evidence in the record, as of the date of the Property Committee meeting, there was no further need for representatives of the Municipal Employer to confer with each other over the aforesaid changes after September 16, 1968. On said date the Property Committee adopted a report approving the prospective shift changes and significantly set forth this statement, "A meeting will be arranged with the necessary representatives to implement the program". (emphasis supplied) As of the day of such

action, the Property Committee was aware that the Teamsters and AFSCME would be vying for selection as exclusive representative on September 25, 1968, the date for the election. The Examiner concludes that the Municipal Employer, by its own official action of September 16, 1968, indicated it was prepared to meet with the "necessary representatives" before implementing the shift changes, meaning, whichever labor organization was selected as exclusive representative.

Thereafter on November 9, 1968, Olds declined to meet with AFSCME before the shift changes were to be effectuated. It is a fact that the Municipal Employer's conduct in that regard was followed by an unlawful strike by a substantial number of its maintenance employes, nearly all of which were members of AFSCME. It is also true that the aforementioned conduct of the Employer became the basis of an AFSCME complaint, charging that the Municipal Employer's unilateral changes in working conditions constituted interference and coercion.

Assuming such unilateral changes of hours had been effectuated by an employer in the private sector subject to state jurisdiction, it may very well be that such conduct would have been adjudged to be violative of Sections 111.06(1)(d) and (a) of the Employment Peace Act, as a refusal to bargain, and derivatively, as interference with the employes' rights to engage in concerted activity for purpose of collective bargaining. However, considering the remedy available to AFSCME on November 11, 1968, the fact is that after Olds' refusal of November 9 to negotiate before making the changes, the Union chose to strike rather than file for fact finding. The parties thereafter on December 2, 1968, settled the matter that precipitated the strike and at least on said date, they stated that they had arrived at a collective agreement which was to be effective at least through December 31, 1969. In addition, AFSCME took steps to withdraw the pending prohibited practice proceeding filed with WERC, it having previously alleged that the Employer's unilateral acts constituted a violation of 111.70(3)(a)1. An examiner for the Commission, on December 6, 1968, dismissed said proceeding.

In view of AFSCME's failure to pursue fact finding after the Municipal Employer's refusal to negotiate, its subsequent resort to an unlawful strike, its filing of and later withdrawal of, a prohibited practice action challenging the shift changes, the Examiner will not treat the Municipal Employer's unilateral changes in hours, as a part of any overall conduct of the Municipal Employer, which otherwise may be violative of 111.70(3)(a)1. Independently, the aforesaid conduct cannot support a claim for relief under the Act. However, nothing precludes the Examiner from considering whether the aforementioned conduct of the Municipal Employer together with other acts, may manifest animus against AFSCME members in determining the question as to whether the Municipal Employer violated 111.70(3)(a)2.

$100 Bonus to Non-Striking Custodials, Discriminatory As A Claimed Reprisal Against AFSCME Members?

The Municipal Employer paid a bonus to those custodials employed as of November 11, 1968, who remained on their jobs throughout the strike, such bonus having been authorized and paid after the strike had been settled. It based said grant on that group's having extended themselves under so-called adverse conditions for the period of the walkout. However, no such similar bonus was ever paid, in whole or in part, to either the newly hired strike replacements, or to the former adherents of AFSCME who abandoned the strike, both of which groups worked under substantially similar conditions. Such disparate treatment may be crucial in determining whether the reasons advanced by the Municipal Employer for rewarding the non-strikers in the first group were in fact pretextual, but not all discriminatory conduct is illegal under 111.70(3)(a)2. Assuming arguendo, that the Municipal Employer's

grant of a bonus to said non-strikers evinces discrimination capable of discouraging membership in AFSCME, nevertheless, whether such conduct can be adjudged violative of 111.70(3)(a)2 depends upon whether the discrimination is directed against AFSCME adherents because of their participation in concerted activity which is protected, namely, a legitimate strike. 8/ (emphasis supplied) The Act, Section 111.70(4)(l), expressly prohibits strikes in municipal employment unlike the general protection of the Federal Act for strikes in the private sector, and therefore the Municipal Employer's grant of the aforesaid bonus cannot constitute statutory "discrimination" against former AFSCME strikers. Under the circumstances here, there could result therefrom no "discouraging of membership" in AFSCME because of the participation of striking custodials in protected concerted activity, since a strike, though it be action in concert, as a matter of law is unprotected. 9/ (emphasis supplied)

Bargaining Request That Non-Members Be Permitted to Ratify the Strike Settlement

In the private sector, given a tentative settlement of an economic strike, an employer is left to the internal devices of the particular union it bargains with, concerning the ratification process of negotiated settlements. If an employer in the private sector should insist, to a point of impasse as a condition of settlement, that non-members be allowed to participate in the ratification process, its conduct may very well be adjudged to be at least an 8(a)(1) and 8(a)(5) violation of the NLRA. (Peace Act, 111.06(1)(d)) However, as in the case with AFSCME's contention that the $100 bonus to non-strikers was violative of 111.70(3)(a)2, the conduct of the Municipal Employer here is interwoven with the action of the parties on or before December 2, 1968, namely, their efforts to settle a work stoppage, which otherwise was unprotected activity under the Statute. For the same reason as stated in the discussion above relating to the $100 bonus, the conduct of the Municipal Employer in requesting that non-members ratify the strike settlement agreement, could not interfere with any protected rights of AFSCME custodials and therefore such conduct is adjudged to be not violative of Section 111.70(3)(a)1. In that regard, the Examiner will not consider whether such conduct may be a part of total conduct of the Municipal Employer, which otherwise may be violative of 111.70(3)(a)1.

COMPOSITION AND CIRCULATION OF LIST OF NON-MEMBERS

Non-Coercive Act, Non-Existence of Acts Hindering The Pursuit of Lawful Work

The Municipal Employer reasons: That to circulate a list of non-member custodials and to further identify other employes as being in a group, "all hired during walkout", effectively "selected out" such employes and marked them for special avoidance, ergo, the trappings of a blacklist. Its syllogism goes on to the effect that at the time of the discovery of the list the Employer had in its employ a number of custodials who had been hired at the time of the 1968 work stoppage and who refrained from participating in the strike, that a blacklist is a device that goes with a strike; strikes under 111.70 are illegal and amount to unprotected activity; AFSCME officers responsible for the actions of their Union were responsible for circulation of such a blacklist; that such officers' participation in that regard constituted engagement in unprotected activity. The Municipal Employer's logic proceeds further in it assertion, that to

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8/ Erie Resistor Corp. v. NLRB, 373 U.S. 221, 223, 53 LRRM 2121 (1963); NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 65 LRRM 2465 (1967)

9/ Wauwautosa Board of Education, (8636), 7/68. City of Milwaukee, (6575-B), 12/63.

circulate a list which creates special avoidance, is to interfere with the rights of non-members to refrain from concerted activity, and that such conduct also hinders said non-members in their pursuit of lawful work.

The Employer, in argument in brief, in effect suggests that an inherent quality of illegality attaches to the circulated document, as if by application of a sort of, res ipsa loquitur (the thing speaks for itself). However, in the alternative, the Municipal Employer speaks in terms of a burden of coming forward, when it argues that no believable explanations for the publication of the lists were advanced at hearing by witnesses for AFSCME, and similarly that the Municipal Employer, at its special meeting of the School Board on May 19, 1969, afforded AFSCME the opportunity to explain the purpose for the lists, and none was forthcoming.

The Employer points to the testimony elicited in cross examination of A. McHugh and Molzahn which it claims clearly establishes that the rank and file of AFSCME could not readily identify a member from a non-member, based upon mere possession of a list which labeled a number of custodials in a class, "all hired during walkout", especially when few AFSCME members actually did know said individuals by name who were hired during the strike. With respect to whether Baumgart's recount of the Ripon incident should be given credence, if the Employer means to suggest in argument that Baumgart's testimony is unbelievable because Eva Allen did not corroborate Baumgart's testimony surrounding the events at the Ripon convention, the Examiner concludes that Allen's testimony has no probative value and her failure to recount any conversations concerning the trip home from Ripon is not significant. The Examiner credits Baumgart's testimony as to the details of the misunderstanding at Ripon, which she testified prompted her to ask A. McHugh on April 21, 1969, for a list of members to be furnished the rank and file. Baumgart's testimony was consistent, she did not hesitate in recounting both the events of the Ripon incident, and of her dialogue with A. McHugh, and she showed no signs of being confused as to time, sequence or details of events. Allen appeared frightened and at times appeared confused. Allen was very unsure of the events surrounding one O'Malley's receiving a $100 bonus and she was confused as to just what period of time he may have worked with her and other AFSCME members after the December 2, 1968 settlement.

The Examiner rejects the conclusion reached by the Municipal Employer, that because the testimony of AFSCME witnesses indicates little possible value in the list as any aid to members in distinguishing members from non-members, that therefore AFSCME had intended to accomplish something illegal by its circulation. The Examiner credits the testimony of Ann McHugh and Molzahn with respect to the underlying reasons for composing and distributing the list and concludes that they alone were responsible for distributing same. An after-the-fact appraisal of Ann McHugh's decision may very well convince all of the parties to this action that possibly a more prudent and productive approach for A. McHugh, would have been to merely inform all of the members that Baumgart, Allen and VanLannen were AFSCME members. Nevertheless, from an examination of the evidence, I perceive no sinister motive attributable to AFSCME for the circulation of the list, merely because the circulators failed to use the most prudent device to enable AFSCME members to determine the extent of union affiliation among the custodials. The list stated a fact, and the Examiner credits A. McHugh's testimony that she could satisfy Baumgart's request by composing a shorter list, one of non-members.

Witnesses for the Municipal Employer testified that the purpose for isolating and identifying non-members had to be that AFSCME and/or its officers were marking such non-members for special avoidance. However, the Municipal Employer implies in argument that AFSCME could have circulated a list of its members to clear up the so-called misunderstanding.

Applying the Employer's "selecting out of non-members" theory, it is difficult for the Examiner to perceive why such a "selecting out" would not also result from publication of a list of members. (emphasis supplied) If Ann McHugh had distributed such a list, query - would not the custodials, who were not members of AFSCME, have been just as isolated as a group, as would have been the case if a list of non-members had been published? The only possible difference between the two situations that the Examiner can perceive, is the notation on the Langlade list, "all hired during walkout". By virtue of that label the Employer also contends that AFSCME and its officers intended to mark said employes for special avoidance. The fact is that the record discloses that a "selecting-out" of a different group of largely non-members was effectuated by the Municipal Employer itself several months prior to the discovery of the Langlade list, namely, by virtue of the School Board's adoption of its Property Committee report of December 23, 1968. As a result thereof, the Municipal Employer published that it would grant a $100 bonus to fourteen (14) of its employes, including eleven (11) in the custodial unit, who remained at their jobs throughout the strike. Arguably, one might say this marked the new replacements, who worked during the strike, for special avoidance, or marked AFSCME members who walked out in November 1968, for special avoidance. It is not enough that in the eyes of some beholder, "special avoidance" may be discerned as the purpose inherent in a document such as the list of non-members distributed by A. McHugh and Molzahn. Absent a clear threat recited in the document, the Examiner concludes that the composition and distribution of the list itself, identifying non-members, and including a reference therein to the class, "all hired during walkout", did not inherently constitute a coercive act or an act which would tend to hinder the non-member employes' pursuit of lawful work.

Examining the language on the Langlade list, together with any attending conduct of AFSCME members or officers on or before the circulation of the list, the question is presented, did such total conduct constitute a violation of Sections 134.03 and/or 111.70(3)(b)? The substance of the former statute, with respect to proscribing "threats or coercion of any kind that hinder or prevent the engaging in or continuing in lawful work", is also prescribed in Section 111.06(2)(f) of the Employment Peace Act. Section 111.06(2)(f) has been interpreted to cover only physical interference, or threats thereof, with the pursuit of work. 10/ (emphasis supplied) The sanctions thereof are typically directed at picket-line activity. The Employer urges that special avoidance was accomplished by publishing the list, which necessarily results in hindering non-members in the pursuit of work. However, the record reveals no evidence that any member of AFSCME urged, or practiced, special avoidance of those custodials who were hired between November 11 and December 2, 1968, or for that matter, no evidence of any acts of avoidance at the work-site against any non-member custodials. There is nothing, from the contents of the list itself to persuade the Examiner that "special avoidance", or an inherent tendency to "hinder pursuit of work", would result therefrom. There is no evidence in the record that any disruption at any work site in the school system took place as a result of the circulation of the lists of non-members.

If the Municipal Employer's "stretch" were given to 134.03, the mere circulation of a handbill not otherwise disrupting the work place and identifying non-union adherents for the purpose of proselytizing new members would be inherently, by their print and distribution, a "threat or intimidation... of another from engaging in...lawful work". The sanction of 134.03 is deemed to be no more broad than that of Section 111.06(2)(f) of the Peace Act. There being no evidence that the four AFSCME officers or any other members engaged in any threats or acts of intimidation, directed against non-members, with only the alternate claim that the writing, in and

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10/ Wis. Orchestra Leaders Assoc. (Hearing Examiner - 8392-A, 3/70, aff'd. WERC, 8392-D, 11/70)

of itself, had the tendency to so coerce, the Examiner concludes that the list of non-members, including the reference to "all hired during walkout" is not inherently coercive within the meaning of 111.70(3)(b), and its composition and circulation does not constitute an act which would tend to hinder or prevent any individual employe in the pursuit of lawful employment within the meaning of 134.03. The mere publication of a list of non-members does not indicate an AFSCME declination to represent non-members, otherwise in the bargaining unit, so that the Examiner rejects the theory advanced by the Municipal Employer that AFSCME and the individual Complainants violated Section 111.70 in that regard.

Protected Activity

From the credible and uncontroverted evidence recited above with respect to the testimony of Baumgart, A. McHugh and Holzahn, the Langlade list and others similar thereto, were composed to settle a misunderstanding. Similarly from the credited testimony of Baumgart, said misunderstanding arose from the misdirected assertion that certain AFSCME members should be selective in their associating socially with Baumgart, Allen and VanLannen. Said female custodials and members of AFSCME had been erroneously labeled "scabs" at the Ripon convention and Baumgart was convinced that if AFSCME members would continue to be so mislabeled by other members, that is would adversely affect the prospect of continued association of some custodials as members of AFSCME. Baumgart's request to A. McHugh was related to the associational aspects of membership in AFSCME. A. McHugh's response in publishing the list of non-members was a further incidental to the right of custodials to associate in their own labor organization. It was an act reasonably related to the interchange of information between officers and their members in furtherance of mutual aid and protection, and in furtherance of said employes' continuing right to be affiliated with a labor organization of their own choosing. The uncontroverted evidence discloses that the circulated lists were for the consumption of Union members only. The record further discloses that the author of the list set forth a fact, when she described the named custodials thereon as non-members. Though A. McHugh's resort to the term "all hired during walkout" made it somewhat difficult for members to identify individuals by name under such a label, said group description related to other custodials, who were in fact also not members. There is no evidence in the record that the existence of said list, or the fact of its circulation to AFSCME members, violated any reasonable and nondiscriminatory rule against solicitation by the Union of custodials on the Municipal Employer's premises during working hours. There is no evidence that even one instance of disruption affecting the unit employe took place anywhere in the school system because of the publication and circulation of the list of non-members.

The Examiner has rejected the Municipal Employer's deduction as to the interrelationship between so-called blacklist, unprotected strikes and the publication of a list of non-members in question here. The Examiner concludes that the acts of AFSCME officers in composing and circulating lists of non-members for the information of AFSCME members, reflected the exercise of the right of officers of a labor organization, functioning in its representative capacity, to disseminate information to its members regarding the extent of affiliation or non-affiliation of employes in the bargaining unit. The Examiner concludes that the aforementioned right is a derivative of and related to, the custodial employes' "right of self organization, (right) to affiliate with labor organizations of their own choosing. . .", as protected under Section 111.70(2) of the Act. 11/ It therefore follows that the publication and circulation of the list of non-

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11/ If the activity of municipal employes can be reasonably related to the expressed 111.70(2) rights of the Statute, and do not otherwise violate 111.70, they are to be adjudged "protected" under the act. - See Board of Education of West Bend, Joint School District No. 1, (7938-A, at page 39)

member custodials, such as was discovered at the Langlade school, constituted an engagement by AFSCME officers in protected activity under the Act.

DISCRIMINATORY DISCHARGES OF AFSCME OFFICERS

Real Motivation for Discharges Implicit in Olds' Letters of May 9, 1969, and in School Board's Formal Action of May 19, 1969

The activity of A. McHugh and Molzahn in composing and circulating the list of non-members has been found to be protected activity under 111.70, and to the extent that such acts of circulation may be imputed to Hutzler and N. McHugh as well, the Examiner concludes that all four officers were engaging in protected activity at the time of the circulation of the list. Olds' letters of May 9, 1969, terminating the employment of the four officers contained the identical language which reads in part as follows:

> "I am taking this action because of a blacklist of non-union employees (a copy enclosed) which was found posted on the blackboard at Langlade school and distributed by union officers. You are an officer of AFSCME Local 1672B and, therefore, responsible for the circulation and distribution of this blacklist."

Subsequently on May 19, 1969, at a special meeting of the School Board, ostensibly called to "consider the continued employment" of the officers, Olds' recommendation for termination was placed before the School Board for its prospective adoption at said meeting. The Municipal Employer rejected AFSCME's request to dispose of the question as to the propriety of the terminations pursuant to the grievance machinery of the 1969 collective agreement. In essence the Municipal Employer proffered an option to AFSCME, which held out the possibility of the Employer rescinding the discharges if AFSCME or the officers acknowledged the illegality of the circulation of the list, and if AFSCME or its officers came forward with the names of the individuals who were actually responsible. The offer of the aforesaid option, termed the VanderKelen amendment in the minutes of such School Board meeting, is deemed to be a further act of intimidation on the part of the Municipal Employer. The act of the School Board on May 19, 1969, together with Olds' constructive discharge letters of May 9 support an inference that the four AFSCME officers were to be "sacked" for their fortuitously having been officers of their local union at the time of the discovery of the Langlade list. The School Board insisted that Olds' terminations were to stand unless AFSCME produced the culprits and acknowledged the impropriety of the circulation.

Under the circumstances the Municipal Employer took its chances on its analysis of the inherent qualities of the list, concerning its legality or illegality. From the testimony of Employer witnesses, the work performance of the four officers was considered to be satisfactory if not exemplary. The Examiner concludes that the Municipal Employer's conduct in discharging the four officers could have only one effect upon the 111.70(2) rights of its employes, namely an adverse one. It follows from the contents of the discharge letters of May 9, 1969, and from the official action of the School Board on May 19, 1969, that the real motivation for the Municipal Employer's discharge of N. McHugh, Hutzler, Molzahn and A. McHugh, comes from the very lips of the Municipal Employer, 12/ namely, for their concerted activity on behalf of AFSCME. The

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12/ NLRB v Great Dane Trailers, Inc., 388 U.S. 26, 65 LRRM 2465 (1967)

Examiner concludes that the Municipal Employer effecutated discriminatory discharges of the four AFSCME officers for the purpose of discouraging membership in AFSCME contrary to Section 111.70(3)(a)2 of the Act. 13/

Motivation for Discharges Manifested in the Total Conduct of the Municipal Employer; Animus Against AFSCME Officers and Committeemen for Their Union Activity

The record discloses that representatives of the Municipal Employer participated in several bargaining sessions with the Teamsters bargaining committee prior to June 1968 in an attempt to reach a bilateral accord over changes in hours and assignments for custodials working in elementary schools. Such neogitations covered a rather lengthy period. However, after the entry of a new exclusive bargaining representative on the scene, the evidence indicates that the Municipal Employer decided that it would not afford AFSCME negotiators the same opportunity to bargain over the question of implementing the prospective changes which its Property Committee had approved. The question of how such shift changes and assignments might be effectuated had long been an important question for the custodials in the unit, and for their previous bargaining committee. In contrast, the record indicates that the Municipal Employer took special pains to arrange a bilateral meeting with AFSCME Representative, Miller, and N. McHugh over relatively trivial matters on October 10, 1968, but on the relatively important question of Dallich's planned shift-changes, the Municipal Employer declined to meet and discuss said question, though its own Property Committee contemplated that such bilateral negotiation would take place prior to the effective date for such changes. In this regard the Examiner concludes that the conduct of the Municipal Employer evinces Employer hostility against AFSCME and its negotiators.

In late May of 1968, Olds reacted to the representations of a bargaining committeemen for the Teamsters, namely N. McHugh, made in the course of bilateral negotiations, wherein he advised Employer negotiators that its subordinate supervision had been critical of night-shift custodial assignments. Olds, rather than meeting the argument of said Teamsters negotiator in further bilateral negotiation, chose to deal individually with N. McHugh by telephone and letter, to the point that he arranged for an interrogation of N. McHugh and said Principal to determine the verity of McHugh's claim. The Examiner concludes that Olds' protracted telephone inquiry and his arrangments for such an interrogation of a custodial bargaining committeeman, outside of the confines of bilateral negotiation sessions, evidenced animus against N. McHugh for his active role as a union bargaining representative on behalf of the custodials.

On April 30, 1969, an agent for the Municipal Employer, a member of the School Board, and some thirty (30) other citizens including several AFSCME officers and members were in attendance at a special Advisory Committee hearing of the City Council to witness and possibly to participate in discussions relative to the method of selecting School Board members. The School Board's Labor Negotiator rose to publicly reprove the AFSCME adherents present, as having participated with their fellow members in an unlawful strike against the School District, and that accordingly they must have a vested interest in the matters at hand, rather than an interest in education. The Examiner concludes that such conduct of the Municipal Employer, by its agent, evinced hostility against AFSCME officers and active members. The question of whether the aforementioned conduct, may be considered as a possible act of interference under (3)(a)1 or the Act is covered in discussion to follow in this Memorandum.

13/ Green Lake County, (6061), 7/62; City of Oshkosh, (Hearing Examiner - 8381-A, 7/68; aff'd. WERC, 8381-B, 10/68)

On the basis of the several aforementioned acts of the Municipal Employer together with Olds' termination letters of May 9, 1969, and the School Board's action of May 19, 1969, reaffirming the discharges, the Examiner concludes that such total conduct of the Municipal Employer reveals the real motivation for its discharge of the AFSCME officers, namely, its animus against AFSCME officers and activists for their concerted activity on behalf of their Union.

MAY CONDUCT RELATING TO THE BARGAINING PROCESS, OR TO BREACH OF CONTRACT, BE VIOLATIVE OF 111.70(3)(a)1, AS TOTAL CONDUCT CONSTITUTING INTERFERENCE?

Since its decision in the City of New Berlin 14/, this Commission has consistently held that independent refusals to bargain cannot constitute prohibited practices under 111.70. The Wisconsin Supreme Court in dicta 15/ approved the Commission's conclusion reached in New Berlin and stated:

> ". . .we do not think the legislature intended in section 111.70, Stats., that a school board should be under a duty to collectively bargain."

In a 1969 case involving a "boiler plate" refusal to bargain, namely, unilateral withdrawal of free lunches by the Employer, the Commission in affirming the decision of a Hearing Examiner, with modification, stated:

> "Regardless of any established unlawful intent or any other established unlawful activity by the municipal employer, a municipal employer's refusal to bargain in good faith with the representative of its employes cannot constitute a prohibited practice since Section 111.70 does not make such activity prohibited." 16/

Other typical refusal to bargain situations appeared in two other decisions, where the Commission dismissed the actions on similar grounds, one involving a municipal employer's refusal to reopen negotiations on an existing contract; and another involving a municipal employer's unilateral grant of benefits to non-unit employes without granting same to employes in the unit. 17/ Both parties to this action recognize that the rule of the case in New Berlin obtains, at least where a complainant seeks a remedy on grounds of a (3)(a)1 violation for an isolated refusal to bargain.

The Examiner concludes that the aforementioned decisions of the Commission do not dispose of the question here framed, in the sub-topic of this Memorandum, and in any event said cases are not considered controlling in the instant controversy by the Examiner, in light of our Supreme Court's language, that under certain conditions the 111.70(3)(a)1 proscriptions may apply to conduct which goes to the fundamental bargaining relationship itself, once a labor organization has secured certification as the exclusive bargaining representative. Those decisions of the Court are covered in discussion to follow.

14/ Ibid, #7.

15/ Joint School District #8 (Madison) v WERB, 37 Wis 2d, 483, 489 (1967)

16/ LaCrosse County (8683-C, 4/69, affirming with modification, H.E. 8683-A, 2/69); aff'd Dane County Circuit Court, #127-361, 7/70.

17/ City of Milwaukee, (8410), 2/68; City of Portage, (8378), 1/68.

In Elmbrook Schools Joint Common District No. 21, 18/ a majority of the Commission reversed the decision of a hearing examiner, who had previously found that certain conduct of the School District, independently and totally, constituted interference under (3)(a)1, by the manner in which the District proffered individual teaching contracts, and because of the form of the contract itself. The Commission concluded that the form, content and historical treatment given to such individual contracts (the form of said contract being at the heart of the Teachers' cause of action) persuaded it to find such conduct, not to be interference. The Commission suggested that the hearing examiner disposed of said conduct as being interference under 111.70(3)(a)1, when said employer's acts actually, could only be sanctioned under the Peace Act, 111.06(1)(d), as a derivative act of interference resulting from a "refusal to bargain in good faith". The Examiner would distinguish Elmbrook and deem it not controlling over the contentions of the parties here, on the grounds that in said case, the Commission was faced with the overriding question of harmonizing teacher contract statutes with 111.70. In addition the validity of the hearing examiner's tenet, that arguably total conduct could constitute (3)(a) 1 interference, may have depended on whether the form and proffer of the individual contracts in Elmbrook would be held violative.

The Commission in Wauwatosa Board of Education 19/ rejected the contention of a complainant-union, that it find an interference violation from an independent act of refusing to bargain and from the total conduct of the municipal employer, which the complainant contended should result in a make whole bargaining order, thus limiting the effects of the Commission's decision in New Berlin. The Commission affirmed the examiner's findings of minor interference violations but otherwise reversed it by declining to distinguish or overrule New Berlin and grant the complaining-union a bargaining order on the theory that the effect of the Employer's total conduct was (3)(a)1 interference. The Examiner notes that the Commission's decision in Wauwatosa Board of Education was issued prior to the Supreme Court's decision in Board of School Directors of Milwaukee, which contains significant pronouncements referred to in discussion to follow. In addition, the matters relating to the bargaining process in Wauwatosa did not involve allegations concerning total repudiation of a collective agreement by an employer.

The Commission from the early days of administering 111.70, certified and treated the designated majority representative of municipal employes as the exclusive bargaining representative. After several years of Board (Commission) decisions wherein the concept of the exclusive representative was applied, the Wisconsin Supreme Court impliedly approved such application of Sections 111.70(4)(d), 111.05 and 111.02(6) in Milwaukee District Council v. WERB, 23 Wis. 2d 303, 304 (1964), and in Jt. School Dist. No. 8. v. WERB, 37 Wis. 2d 483, 486 (1967). The Court shortly thereafter, in Board of School Directors of Milwaukee v. WERC 20/, expressly approved the WERC treatment of the designated majority representative under 111.70 as the exclusive bargaining representative. In the same case the Supreme Court affirmed the lower court, in its reversal of the Commission, and held that, permitting a minority union to influence the decision of the School Board through discourse in a public meeting, was tantamount to negotiating with a minority union. The Court described the character of such dialogue as follows:

18/ (9163-C) 12/70, reversing (H.E. 9163-B) 3/70.

19/ (8319-C), 7/68, modifying (H.E. 8319-B) 6/68.

20/ 42 Wis. 2d 637, 647 (1969)

"If the minority union representative met privately with the Municipal Employer to discuss negotiable topics, i.e., wages, hours, and conditions of employment, the employer would certainly have committed a prohibited practice. To permit such a discussion under the guise of a public meeting is just as improper." (42 Wis. 2d 637, 654)

Earlier in its decision the Court quoted with approval from the opinion of the Circuit Court, the lower Court having indicated that the School Board's act of listening to contentions of a minority representative in public meeting amounted, to bargaining with a minority representative, "which was a prohibitive practice under 111.70(3)(a)1."

The Examiner concludes that the Wisconsin Supreme Court, though having earlier approved the WERC decision in New Berlin, that a refusal to bargain will support no cause of action under 111.70, nevertheless, has clearly indicated that employer conduct may be violative as interference, where it so seriously undercuts the exclusive bargaining representative as to render the employes' selection of a representative under the Act meaningless. Bargaining with a minority union, is such conduct proscribed under 111.70(3)(a)1. This is also true of conduct producing the same result, namely a municipal employer's complete repudiation of the collective agreement, accompanying other acts of interference.

What of the portions of the total conduct of the Municipal Employer, which otherwise may constitute a "breach contract"? Is the Municipal Employer correct, and is the Majority's dicta in Elmbrook controlling, so as to preclude considering such conduct as a provable 3(a)(1) action? A rather detailed explanation of the origins of another Supreme Court decision is deemed necessary in examining both that question, and some Court dicta.

In an original action in Dane County Circuit Court a plaintiff union sought, through an action for Declaratory Judgment, to overturn the orders of the Chief of the City's fire department, which prohibited certain alleged supervisory personnel of said department from serving in official positions in the Firefighters.

The plaintiff union asserted that the Chief's order violated a provision of its collective agreement with the Common Council of the City. The Respondent pleaded affirmative defenses to the action, one of which stated to wit: The plaintiff officers and other department members are supervisory personnel, and therefore are not proper members of the bargaining unit, as they are not municipal employes as defined in Section 111.70, Stats.

The plaintiff union demurred to the defense and contended that it did not constitute a defense because it purported to raise a question of representation over which the WERC has exclusive jurisdiction. The Circuit Court ruled for the Respondent-City. The plaintiff-appellant, in its appeal before the Supreme Court, contended that the trial court did not have "subject matter" jurisdiction over the affirmative defense, since a question of proper representation is solely for the WERC.

The Supreme Court 21/ ruled that though Section 111.70(4)(d) and 111.05 place primary jurisdiction with the administrative agency over matters of representation, such fact did not deprive the court of "subject

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21/ City Firefighters Union v Madison, 48 Wis. 2d 262 (1970)

matter jurisdiction" to decide the substantive issue before it, namely whether the named appellants could properly hold union offices to which they were elected. The Supreme Court further held that the trial court was jurisdictionally competent to determine the representation type issue which was part of the substantive question even though it was one that could have been presented to an administrative agency. The appellant union had argued that it had no choice of forums to get a determination of the representation issue because the Chief's action violated a collective agreement, there being no claim for relief before the WERC on breach of contract under 111.70.

The Court made this significant comment in rejecting the appellant-union's argument: (48 Wis. 2d 262, 269)

> ". . . This is true, (no breach-of-contract sanctions under 111.70) but the very same acts, if proven, would also have served as a basis of 'prohibited practice' action which WERC is clearly empowered to hear. Thus, appellants did have a choice of forums depending on what label they selected for their action." (emphasis supplied)

The label, the Supreme Court must have had in mind for such an action before the WERC, was a 111.70(3)(a)1 action where the Union might have complained that the Chief's order, prohibiting employes from associating as members of a union, constituted interference with employes' rights to affiliate with a labor organization of their own choosing. It is also apparent that the Court meant the WERC as the alternate forum, and was not referring to an action in circuit court grounded in a (3)(a)1, "prohibited practice". This is not to say that one may conclude from the Supreme Court's opinion that every act of a municipal employer which may constitute a violation of its collective agreement is potentially a (3)(a)1 violation, as being interference with Section 111.70(2) rights, through the medium of a complainant merely bringing the action under the right label. However, it does indicate that the fact that total conduct in this case includes matters relating to breach of contract, does not preclude the Examiner from determining whether AFSCME has proved a (3)(a)1 interference from such total conduct of the Employer.

Sometime after the Supreme Court decision in City Firefighters Union v. Madison, supra, the WERC issued its decision reversing the Examiner in Elmbrook Schools. The majority in its comment on the Dissenting Opinion spoke in dicta to the rationale of the Dissent, concerning whether withholding teacher contracts was protected activity. The Majority took issue with the conclusion of the Dissent that withholding such contracts is protected under the Act and went on to refute the theory by saying that under the same reasoning a violation of a collective bargaining agreement covering municipal employes could also constitute a prohibited practice under (3)(a)1 of the Act. The implication being, such violations are in fact not sanctioned under the Act.

If in fact, the dicta of the Commission does stand for the proposition, that any conduct remotely related to potential breaches of contract can never be actionable, as part of total conduct, as interference under the Act, the Examiner would distinguish the effect of the language of such dicta in view of the Supreme Court's language in City Firefighters v. Madison, supra.

The Examiner concludes that whether this forum is confronted with a question of a "refusal to bargain" enmeshed in other conduct claimed violative, which the Supreme Court spoke to in Board of School Directors of Milwaukee, supra, or whether repudiation of the contract, i.e., breach of contract, is part of total conduct, the mere fact that isolated conduct may constitute an independent violation of the Peace Act, but

otherwise not similarly proscribed by 111.70, does not prevent the WERC from considering whether a municipal employer's total conduct may constitute "interference and coercion" within the meaning of 111.70(3)(a)1 of the Wisconsin Statutes.

THREAT OF DISCHARGES, AS INDEPENDENT ACT OF INTERFERENCE

The discharge letters mailed to AFSCME officers by Olds on May 9, 1969, charged the recipients with being responsible for the distribution of blacklists. The officers were alerted that a special meeting of the School Board would be called to consider their continued employment. On May 19, 1969, in response to AFSCME's request to utilize the grievance procedure of the 1969 agreement to dispose of the merits of the terminations, the Municipal Employer asserted that there was no binding collective agreement. Olds, in testimony (on both cross and re-direct) refers to the opportunity that AFSCME and the officers were given to explain the lists and possibly clear the officers. He went on to testify that Oberbeck prevented the four officers from responding, and indicated that AFSCME would await the School Board's action. At hearing, Olds either did not appreciate the nature of the ultimatum that AFSCME was confronted with, or in the alternative, in view of his communication of December 2, 1968 and other overt acts of the Municipal Employer, the Examiner chooses not to accept Olds' evaluation of the option proffered to AFSCME on May 19, 1969. When one considers that up to said date of the special School Board meeting: that Olds had advised the custodial employes on December 2, 1968 that there was from that date a collective agreement between the parties; that on February 10, 1969 the Municipal Employer declined to acknowledge the existence of such an agreement by its declination to process a grievance thereunder; that on March 31, 1969 AFSCME cleared up the only remaining drafting problem, there being no evidence of any further written communication from the Employer, and no credible evidence, suggesting other open items; that at the special meeting of May 19, AFSCME sought further discourse over the validity of the discharges according to the procedures adopted by the parties for disposing of such controversies; What was the Municipal Employer's response? In essence it was this: we have invited you to this forum to learn any further details about this blacklist, we have no collective agreement with you, AFSCME!

Considering the School Board option, termed the VanderKelen amendment, when examined in the context outlined above, which is reflective of the record, the School Board really gave AFSCME no choice at all. Unless AFSCME or its officers came forward with the names of others who may have been responsible for the Langlade list et al, and acknowledge someone's wrongdoing in its circulation, those who were AFSCME officers would be fired as per Olds' recommendation before the School Board. The Examiner concludes that a clear and satisfactory preponderance of the evidence supports a finding that the Municipal Employer's actions of May 19, 1969 constituted an independent threat of discharges directed against the AFSCME officers and/or the unnamed potential perpetrators, for whom the tenure of the AFSCME officers was held as hostage, all in violation of 111.70(3)(a)1, as an act of interference with the officers 111.70(2) rights.

All of the discussion above, under THREAT OF DISCHARGE etc, with respect to the existence of 1969 collective agreement, and regarding the overt acts of the Municipal Employer relating thereto, is applicable to the matters covered under Repudiation of the Collective Agreement, to follow. The question as to whether certain testimony in the record may indicate a suspension or purging of the 1969 agreement, is covered under the same topic, including matters of credibility.

TOTAL CONDUCT OF MUNICIPAL EMPLOYER, CONSTITUTING INTERFERENCE UNDER 111.70(3)(a)1.

Intimidation of AFSCME Members at April 1969 Advisory Committee Hearing

To the extent that the Municipal Employer, in its cross-examination of N. McHugh, takes exception to N. McHugh's testimony, that VanderKelen was a representative of the School Board with regard to the events of the Advisory Committee meeting, the Examiner in Findings of Fact, paragraph #5, supra, concludes that VanderKelen for all time material herein was an agent of the School Board. The discussion, with respect to the Labor Negotiator's activities at said meeting, set forth on page 49, supra, under Motivation for Discharges etc is applicable to the matters raised under Intimidation and the facts are as indicated in Findings of Fact, paragraph #20, supra.

The Advisory Committee meeting was conducted under the auspices of the Green Bay City Council to elicit opinions and reactions from interested citizens on a relatively important issue before the community. VanderKelen was acquainted with at least four or five of the AFSCME activists present, some being bargaining committee members. Without provocation, he publicly chastised said individuals, reminding the remaining citizens present that as former strikers that it was questionable, whether they, as well as others present, had a real interest in education. Said statement would convey to others that said individuals were present in "concert". Considering the Council's quest for citizen participation on the public question at hand, and in view of the favored position of "speech and assembly" in the commonwealth, the Examiner concludes that the conduct of the Municipal Employer, by its agent had a chilling affect upon participation of AFSCME activists in the affairs of the hearing. 22/ It was an act of intimidation, which together with other acts, has been adjudged to be interference within the meaning of (3)(a)1 of the Act.

Repudiation of the Collective Agreement

On December 2, 1968, after the illegal strike, the parties reached a strike settlement agreement and an agreement on the terms of a 1969 collective agreement. On said date Olds caused to be delivered to all the custodial employes, copies of a memorandum setting forth the fact that the parties had reached an accord in both areas. (A copy of said memorandum, marked Exhibit 22, is attached as Appendix F, post., following Memorandum)

Olds, in testimony at an early stage of the hearings, in the course of interrogation by Mr. Carlson, Counsel for AFSCME, testified concerning the number of collective agreements the Employer had with AFSCME and responded to the effect that it seemed like the Employer had been in constant negotiations, but that the parties did not have any agreement. Shortly thereafter with reference to the existence of a 1969 contract, and in response to continued interrogation by Mr. Carlson, Olds testified as follows:

"BY MR. CARLSON

Q Now, would you tell me whether or not an agreement was reached so far as you believe prior to the time that the employes returned to work on December 2, 1968?

A Yes, I believe an agreement was reached with the questions

22/ Board of Educ. of West Bend, (7938-A), 4/68

being in terminolgy and agreeing on the actual printing of the contract." 23/

Olds immediately thereafter indicated in testimony that only one or so language problems remained.

Olds again reaffirmed his belief that there was a binding contract when he testified as follows:

"BY MR. CARLSON

Q All right, sir. Before June 5th in your judgment, in your view, did the Board of Education have a binding agreement with the Local Union 1672B for the year 1968?

A Yes. I think insofar as points that were not in dispute, and I have related this to Mr. Oberbeck, that following through with the contract, we were following through with the contract. And to my knowledge I believe that in every instance, unless there was something that was in dispute, the terms as agreed upon at the time that the negotiations took place and at that time fortunately because of the particular situations that the negotiations took place in that many Board members were busy this time with negotiations.

Q As a matter of fact, sir, as of June 5th there was nothing in dispute?

A As of June 5th to my knowledge we were generally in agreement.

Q That had been true for most before, isn't that correct?

A Yes, with the exception of some of the language that was changed." 24/

After Counsel for AFSCME presented for Olds' examination, Oberbeck's letter of March 31, 1969, relative to the language clarification relating to Article XXV, of the hours of Work provision in the collective agreement, Olds responded as follows:

"BY MR. CARLSON

Q Would you please examine Exhibit No. 19, Article XXV, Hours of Work, and see if the language included in that letter has been included in Exhibit No. 19?

A Yes, it has been.

Q Now, do you know of any other changes in terminology or questions of terminology that existed after March 31, 1969?

A If there are others, I am not aware of them." 25/

Olds went on to testify that when he received VanderKelen's letter of June 5, 1969, wherein the Labor Negotiator recommended that the School

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23/ Page 93, Transcript.

24/ Page 96, Transcript.

25/ Page 96, Transcript.

Board decline to honor the 1969 agreement, Olds indicated that he accepted VanderKelen's explanation.

In examining the testimony of VanderKelen concerning whether all, or some of the terms, of some collective agreement, be it the '67 or '68 Teamster contract or the AFSCME '69 labor agreement, were in effect as of February 10, 1969, VanderKelen's testimony contains several inconsistencies. With respect to the status of collective agreements, if any, as of February 10, 1969, VanderKelen in response to interrogation by Counsel for AFSCME testified as follows:

"BY MR. CARLSON

Q Well, when you said "our present agreement" did you have anything specific in mind other than my failure to follow procedure?

A What I had in mind is what I already testified. The last contract was in full force and effect until a new one is signed. The last complete one.

Q Which one was that?

A Last Labor agreement completely adopted was the 1967 labor agreement between the Board of Education and Teamsters Local 75. Never a further agreement because of the continual dispute over the assignment of workers and the rights of management to make such assignments.

Q Then is it your position that the 1967 contract was in effect as of February 10, 1969?

A No.

Q No?

A My position was really I was somewhat irked I hadn't gotten the letter if you want to commence a labor matter rather than the city attorney who had no knowledge of it. As a matter of fact, I am still somewhat irked. You people had your phone conversations. I didn't participate in them.

Q Well, would you try and answer my question. Did you believe as of February 10, 1969, there was any contract in effect?

A We were waiting for Mr. Oberbeck to send us back the contract that had been tentatively agreed to on December 2nd and by resolution put into effect many of the things we had agreed to. Other questions we had to read over when he sent it back "before the agreements would accrue, and this is what we were waiting for. I made such a recommendation when I did get it back on the minutes of the Board of Education meeting on May 5th to accept the contract. I withdrew that recommendation for my own reasons.

Q Would you please tell me what, if any, contract you believed was in effect on February 10, 1969?

A On February 10, 1969?

[illegible] of your letter.

A I would believe the conditions of the contract that hadn't been -- the conditions of any existing contract that had been agreed to by subsequent resolution and pending the return of the completed contract from Mr. Oberbeck would have been those portions that would have been in effect.

Q You are referring to the 1969 contract now?

A Referring to any contract in general at any time. Often you run on the old contract until you get the new contract completed.

Q When you say "our present agreement" what agreement were you referring to there?

A The agreement left from the Teamsters 75 that would have been the 1967 agreement except those which were amended, those which have been amended by resolution. You understand, Mr. Carlson, you don't always wait until a contract is signed before you put it into effect because of the budgetary requirement you have resolutions and ordinances that put them into effect. Often well into the middle of the year before the contract is finalized." 26/

In subsequent testimony, VanderKelen first makes reference to a problem of witness fees as being a continuing language problem which was unresolved. He made further reference to Oberbeck's commitment at strike settlement concerning no reprisals, all of which was in response to cross examination by Counsel for AFSCME, he testified as follows

"BY MR. CARLSON

Q All right. So up until that day then it was your position that the contract for 1969 should have been signed?

A I have no different position now as far as recommending the contract, outside of the one thing on witness fees. I had no objection to that agreement. I do have an objection to making an agreement with someone that gives their word on one thing and then doesn't keep it because he said this in front of the Property Committee of the Board and he also said he would make it crystal clear that there would be no retaliation in front of those same people.

Q It is correct, is it not sir, that up until this day you had the view that the contract should have been signed?

A No, I had the view -- wait a minute. I had the view that the contract should be ageed to and adhered to.

Q But not signed?

A You understand that I am merely recommending a

26/ Pages 153-155, Transcript.

contract. Once I recommend it, I don't know if Mr. Miller and the Board are going to sign the thing. We just live by them. I am not trying to be evasive. I don't go up to the Board and say sign this. I don't have that kind of authority.

Q It is correct, is it not, that up until that day it was your view that the 1969 contract should be agreed to and adhered to?

A As far as I am concerned, you can bring it up today. As far as I am concerned, you can live by that contract today. That is what we negotiated, but we also agreed to it on the condition Mr. Oberbeck would say that there would be no retaliation; and that, of course, is the flaw, his promise rather than the agreement." 27/

The Board of Education's judgment not to execute, or not to give force and effect, to an agreement with AFSCME, following the strike settlement in December of 1968, seems to be based on two theories advanced by VanderKelen. The first being that the accord of December 2, 1968 was only tentative, perhaps merely a "moral agreement" to be completed and given effect upon the approval of both parties as to the exact language to be included in the agreement. Secondly, that the agreement was a conditional one capable of partial performance as of December 2, 1968, but only to be completely operative when the Board of Education was satisfied that AFSCME would carry out a "condition precedent" to a complete and executed agreement, namely, action and words of AFSCME representatives to make certain that no act of recrimination, or recriminatory verbiage, would be directed against custodial employes who were not strikers.

VanderKelen's testimony with regard to matters raised in his June 5, 1969 letter border on the incredulous. From the demeanor of VanderKelen on the witness stand, including his indirect, rambling and often evasive answers with respect to his being able to identify specific instances of "discriminatory practices" against custodials, compels the Examiner to discredit his testimony in that regard.

There is no evidence in the record of any probative value to persuade the Examiner that a "no-reprisal" condition was made a part of the strike settlement and collective agreement so as to permit the Municipal Employer to vitiate an otherwise viable agreement. In any event the Examiner is convinced that it was Oberbeck's untimely and imprudent conversation with an alderman on or near May 28, 1969, and his references to "scabs" in meetings with representatives of the Municipal Employer on May 19 and 28, 1969 which prompted the Labor Negotiator's letter of June 5, 1969. Perhaps said action and reaction is all too indicative of the then sad state of the bargaining relationship between the parties to this action.

The Examiner concludes that evidence preponderates for the proposition that the parties had reached an accord on December 2, 1969 over the terms of a 1969 collective agreement; similarly that said agreement, as of February 10, 1969 was complete for purposes of executing an instrument subject only to language clarification covering the Hours of Work provision, the Examiner having discredited VanderKelen's testimony late in the proceeding as being an afterthought, with respect to whether language on "witness fees" was actually any impediment to a viable collective agreement.

27/ Page 513, Transcript.

The record supports a finding that the Municipal Employer repudiated its 1969 collective agreement on February 10, May 19, and June 3, 1969. Such conduct is deemed tantamount to bargaining with a minority representative. 28/

On the basis of the total conduct of the Municipal Employer on and after December 2, 1968, including the independent threats of discharges made on May 19, 1969, the Examiner concludes that such conduct, from the clear and satisfactory preponderance of the evidence in the record, constitutes interference violative of Section 111.70 (3)(a)1 of Wisconsin Statutes.

REMEDY

Section 111.70(4) and (5) provides in substance that the Examiner may issue final orders which may require a respondent to take such affirmative action, including reinstatement of employes with or without pay, as the Commission (Examiner) may deem proper.

The Examiner in order to effectuate the purpose of 111.70 has ordered reinstatement of the four AFSCME officers with full benefits and back pay, less net interim earnings from gainful employment elsewhere. However, the set-off which the Municipal Employer may potentially utilize, by virtue of the Examiner's order, to mitigate its back pay obligation to each Complainant who may have received interim earnings, is intended to leave undisturbed (with no mitigation of back pay to apply), that portion of interim earnings received from a "moonlighting" job that each Complainant may have occupied before discharge, and which earnings would have continued had a Complainant not been discharged. (See Order, paragraph #2 (b), page 23, in particular the words ". . . , that they otherwise would not have received as earnings") (emphasis supplied)

With respect to the Order directing affirmative action remedying the conduct constituting interference under 111.70(3)(a)1, paragraph #2(c) page 23, supra, the Examiner in order to effectuate the purposes of the Act is placing AFSCME in the position it would have been on February 10, 1969, as if the Municipal Employer had acknowledged the existence of the 1969 collective agreement and had complied with the grievance-arbitration procedure.

However, the aforesaid paragraphs #2(c) through #2(e), page 23 make provision for AFSCME to decide whether or not it desires to arbitrate the dispute in question. The Examiner has concluded that the obligation to arbitrate does survive the termination of the 1969 collective agreement, where the grievance was filed during the life of such agreement and where the Complainant has prevailed in a prohibitive practice proceeding otherwise timely filed pursuant to 111.70 and 111.07(14). However, the Examiner has denied AFSCME's prayer for relief seeking $100 bonus payment to all custodial AFSCME members who had not previously received same, since no 111.70(3)(a)2 violation had been found.

In view of the Examiner's conclusion that the Commission's rule of the case in New Berlin 29/ does not preclude a make-whole remedy ordinarily associated with a Peace Act remedy under 111.06(1)(d), the

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28/ Board of School Directors of Milwaukee 42 Wis. 2d 637, 654 (1969)

29/ Ibid #7

Examiner has directed the Municipal Employer to cease and desist as indicated in paragraphs 1(b) and (c) of the Order, page 22, supra. The impact of said cease and desist order is contingent upon the continued existence of a collective agreement between AFSCME and the Municipal Employer, or upon the existence of an agreement between said parties as defined in Section 111.70(4)(i), Wis. Stats.

Dated at Madison, Wisconsin, this 25th day of February, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

STATE OF WISCONSIN

BEFORE THE EMPLOYMENT RELATIONS COMMISSION

NORBERT MC HUGH, LOUIS HUTZLER, DARREL MOLZAHN, ANN MC HUGH, and GREEN BAY EMPLOYEES LOCAL 1672B, AFSCME, AFL-CIO,

Case XI
No. 12944
MP-631

Complainants,

RECEIVED
JUN 5 1969
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

v.

BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY, et al., Green Bay, Wisconsin, and EDWIN OLDS, Superintendent,

Respondents.

COMPLAINT

The Complainants above named complain that Respondents above named have engaged in and are engaging in prohibited practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, and in that respect allege that:

8. Since the election preceding the said certification, the Respondents have engaged in a course of conduct the total effect of which has tended to interfere with, restrain and coerce the bargaining unit employees in the exercise of their rights provided in Wis. Stats., Sec. 111.70(2) and in some instances tended to discourage membership in Local 1672B by virtue of discrimination in regard to tenure and other terms or conditions of employment; the said course of conduct including the following:

(a) Harassment of Complainant, Norbert Mc Hugh, by investigation into his past activities, making unfounded

accusations of misconduct, and publicly accusing him of wrongdoing;

(b) Causing Complainants Norbert Mc Hugh and Louis Hutzler to forfeit a day's pay for attendance under subpoena, of the hearing on June 24, 1968, on the representation petition, while other employees of the Board of Education attended the same hearing without loss of pay;

(c) Refusal to sign either of the two contracts that have been negotiated since Local 1672B has been certified and acting in disregard of the negotiated agreements of the parties in the following respects:

(1) On November 11, 1968, the employer unilaterally made changes in shift assignments and working locations for certain bargaining unit employees notwithstanding and contrary to provisions in the Agreement which said:

> "In transferring, filling vacancies or making promotions, preference shall be given to employees who are oldest in point of service or in line for promotion, provided said employees are qualified for the position in the opinion of the Superintendent of Buildings and Grounds."
>
> "When new jobs are created or vacancies occur, such jobs shall be posted immediately and a complete job condition shall be included. Said postings shall remain posted for seven (7) workdays before operation begins. Postings shall be inserted in an employee's pay envelope during employee's vacation period. All bids received shall be opened at the end of the posting period with committee chairman present. Seniority shall govern which employee gets the job if other qualifications are equal in the opinion of the Superintendent of Buildings and Grounds . ..."

(2) On December 23, 1968, Respondent Board of Education approved and adopted a recommendation of its Property Committee that certain bargaining unit employees be paid $100.00 each as an alleged "adjustment for additional work loads imposed" during the period of November 11, 1968, and December 2, 1968, during which period all of the bargaining unit employees were on strike except those who subsequently received the $100.00 bonus. The bonus was paid to said non-striking employees notwithstanding and contrary to wage scale and overtime provisions in the agreement of the parties then existing.

(3) On February 5, 1969, Complainant Local 1672B, by its attorneys, notified the Board of Education that it had decided to submit a grievance relating to the $100.00 bonus incident to arbitration under the negotiated but unsigned agreement which included a paragraph providing

> "Within five (5) days of completion of Step 4, the grievance shall be submitted to arbitration ...." Thereafter, on February 10, 1969, the Board of Education furnished its response in writing as follows:
>
> 'Dear Mr. Carlson:
>
> 'Your letter of February 5, 1969, addressed to the Board of Education, Joint School District No. 1 was referred to me in the normal procedural manner.
>
> 'Your letter refers to Step 5 of the Grievance Procedure in the collective bargaining agreement. Our present agreement does not have this number step, nor does it have provision for arbitration representative."
> Very truly yours,
> Donald Vanderkelen"

(d) Following a strike by most, but not all of the bargaining unit employees in November of 1968, the employer, as a condition of the settlement thereof, insisted that non-union members be entitled to vote on whether or not to ratify the settlement agreement, in disregard of the Certification of Complainant Local 1672B, and in disregard of the exclusive recognition that the Employer had yielded in the agreement.

(e) Suspension and discharge of Complainants, Norbert Mc Hugh, Louis Hutzler, Darrel Molzahn, and Ann Mc Hugh, for being officers of Complainant, Local 1672B, and therefore alleged to be responsible for the circulation and distribution of a list of non-union employees, referred to by Respondent, Edwin Olds, as a "blacklist".

9. The aforesaid conduct of Respondents Board of Education and Edwin Olds, constitutes a violation of the laws of the State of Wisconsin, Sec. 111.70(3) 1. and 2.

WHEREFORE, Complainants demand Respondents, Board of Education and Edwin Olds, be found guilty of violating the laws of the State of Wisconsin, Sec. 111.70(3) 1. and 2.; that Respondents be ordered to reinstate Complainants Norbert Mc Hugh, Louis Hutzler, Darrel Molzahn and Ann Mc Hugh to their former employment with full restoration of rights and benefits; that Respondents be ordered to make a written report to the Commission stating that each Respondent has complied with the above orders; that Respondents be ordered to post copies of said report on all bulletin boards regularly

used by and referred to members of the bargaining unit; and for such other and further relief as the Commission deems appropriate under the circumstances.

Lawton & Cates

Lawton & Cates
Attorneys for Local 1672B, Green Bay City Employees; Norbert Mc Hugh, Louis Hutzler, Darrel Molzahn, and Ann Mc Hugh

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

John C. Carlson, being first duly sworn, on oath, deposes and says that he is a partner in the law firm of Lawton & Cates, 110 E. Main St., Madison, Wisconsin, and that he is one of the attorneys for the Complainant named in the foregoing Complaint; that he has read the complaint, and he believes the same to be true; that the basis for this belief is the result of conferences and investigation by his office.

John C. Carlson

Subscribed and sworn to before me this
3 day of June, 1969.

Notary Public, Dane County, Wis.
My commission: Expires 5-7-72

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORBERT MC HUGH, LOUIS HUTZLER, DARREL MOLZAHN, ANN MC HUGH, AND GREEN BAY EMPLOYEES LOCAL 1672B, AFSCME, AFL-CIO,

Complainants,

vs.

BOARD OF EDUCATION, JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY et al, GREEN BAY, WISCONSIN, AND EDWIN OLDS, SUPERINTENDENT,

Respondents.

ANSWER

Case VI
No. 12944 MP-63

The respondents above named, by their attorney, Ervin L. Doepke, as and for an answer to the complaint of the complainants admits, denies and alleges as follows:

1. Answering the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the complaint, respondents admit the allegations contained therein.

2. As to Paragraph 8 of the complaint, respondents deny the allegations contained therein, and affirmatively allege that the respondents did not interfere with the exercise of the rights of the employees set forth in Wisconsin Statutes, Section 111.70 (2).

3. As to Paragraph 8 (a) of the complaint, respondents deny sufficient information upon which to form a belief as to the allegations contained therein and, therefore, deny the allegations.

4. As to Paragraph 8 (b) of the complaint, respondents deny the allegation that complainants Norbert McHugh and Louis Hutzler forfeited a day's pay for attendance under subpoena at a hearing on June 24, 1968, and allege the fact to be that the complainants Norbert McHugh and Louis Hutzler forfeited a day's pay for an unauthorized absence.

5. As to Paragraph 8 (c) of the complaint, respondents deny the allegations contained therein.

6. As to Paragraph 8 (c) (1) of the complaint, respondents deny the allegations contained therein, and specifically deny respondents made any unilateral change in shift assignments and working locations for certain bargaining unit employees, and allege that the changes in shift assignments and working locations were agreed to by the certified bargaining unit and the respondents.

7. As to Paragraph 8 (c) (2) of the complaint, respondents deny the allegations contained therein, and allege the fact to be that the only employees of the respondents during the period November 11, 1968 and December 2, 1968 were those employees on the job and employees with authorized absences.

8. As to Paragraph 8 (c) (3) of the complaint, respondents deny the allegations contained therein, and allege that no grievance was submitted.

9. As to Paragraph 8 (d) of the complaint, respondents deny the allegations contained therein.

10. As to Paragraph 8 (e) of the complaint, respondents deny the allegations contained therein, and allege that a black list was circulated and distributed by Green Bay Employees Local 1672B, AFSCME, AFL-CIO, and as the respondents are informed and verily believe, Norbert McHugh, Louis Hutzle Darrel Molzahn, and Ann McHugh were the officers of Local 1672B at the time of the circulation and distribution of said black list, and that they are, therefore, responsible for the circulation and distribution, all in violation of the Statutes of the State of Wisconsin, Section 111.70 (2) and Sections 111.70 (3) (b) 1. and 2.

11. As to Paragraph 9 of the complaint, respondents deny the

WHEREFORE, respondents demand that the complaint be dismissed as to the respondents and that the complainants be found guilty of violating the Statutes of the State of Wisconsin, Section 111.70 (2) and Sections 111.70 (3) (b) 1. and 2.; that the complainants be ordered to cease and desist from the circulation of the black list; that the complainants be ordered to post copies of the orders of the Commission on all bulletin boards regularly used by the members of the bargaining unit; and for such other and further relief as the Commission deems appropriate under the circumstances.

Ervin L. Doepke
City Attorney
City of Green Bay

STATE OF WISCONSIN)
) SS.
COUNTY OF BROWN)

Ervin L. Doepke, being first duly sworn, on oath deposes and says that he is the City Attorney for the City of Green Bay, Wisconsin, and that he is the attorney for the respondents named in the foregoing Answer; that he has read the Answer, and he believes the same to be true; that the basis for this belief is the result of conferences and investigation by his office.

Ervin L. Doepke

Subscribed and sworn to before me
this 19th day of June, 1969.

Carol Hart
Notary Public, Brown Co., Wis.
My Commission expires 1-14-73.

APPENDIX D

GREEN BAY
PUBLIC SCHOOLS

E. 36
Ex 36
8/4/69

EDWIN B. OLDS, Superintendent
MILDRED T. JORGENSON, School District Clerk

BOARD OF EDUCATION
ADMINISTRATIVE OFFICES
100 N. Jefferson St., Green Bay, Wis. 54301
PHONE: 432-0351

May 9, 1969

Mr. Norbert McHugh *
1307 Mather Street
Green Bay, Wisconsin 54303

Dear Mr. McHugh:

This is to advise you that you are suspended from employment with the Green Bay Board of Education effective May 12, 1969. Further, you are notified that I am, by written communication to the Board of Education, recommending that disciplinary action be taken by the Board.

Request is being made to the President of the Board of Education for a special meeting to consider your continued employment. If a special meeting date is fixed by the President, you will be notified as soon as it is set. The next regularly scheduled meeting of the Board is May 26, 1969 at 7:30 P.M., Fourth Floor, City Hall, Green Bay, Wisconsin.

I am taking this action because of a blacklist of non-union employees (a copy enclosed) which was found posted on the blackboard at Langlade School and distributed by union officers. You are an officer of AFSCME Local 1672B and, therefore, responsible for the circulation and distribution of this blacklist.

Any property of the Board of Education and keys to Board of Education equipment and buildings shall be turned in to Mr. Dallich's office immediately.

Sincerely yours,

Edwin B. Olds

EDWIN B. OLDS
Superintendent of Schools

EBO:m
Encl.

cc: Mr. James Miller
Mr. N. Dallich
Members, Bd. of Ed.

*Note: Identical letters were directed to individual Complainants Louis Hutzler, Ann McHugh and Darrel Molzahn, Exhibits 42, 43, and 44 respectively.

APPENDIX E

POST ON BULLETIN BOARD

From Board of Education Maintenance Employees
Local 1672B

To All Union members.

Next meeting will be held.....
Date: Saturday - May 3rd
Time: 9 A. M.
Place: Northside Hall

Resp. Ex No. 1

From: Board of Education Maintenance Employees
Local 1672B

Resp. Ex No. 2
7/16/69

To: All Union Members.

Reas on: To settle a misunderstanding.....The following are not members of Local 1672B.

Gerald Ahl
Ralph Carpenter
Jack O'Malley
Wm. Nies
Clarence Van Beckum
Ray Carpenter
Floyd Johnson
Richard Ewing
Harold Wiesner
Viola Stelloh
Frank Stoffelen
Robert Burkel
Earl Halstead
Earl Taylor
Jos. De Bouche
All hired during walkout.

Keep on file in case any questions aris e...Do Not Post.

December 2, 1968

Comp. Ex. No. 22 7/17/69

TO: ALL EMPLOYES

From: Edwin B. Olds

As you are all now aware, the labor dispute which involved a walkout of most of our custodial employes has now ended. All custodians whose contracts were terminated when they walked out have been reinstated and returned to work as of today.

It has been a difficult three weeks and we are happy that the situation has been resolved. We are also appreciative of the extra effort many of you put forth during these last weeks.

Terms of the settlement of the dispute were rather fully reported in mass media over the week end, but since it was a holiday week end we know many of you were out-of-town. Therefore, because any crisis which involves one segment of our staff affects all of you, we would like to detail for you the settlement agreement. It was worked out by representatives of the Board of Education and of the custodians' union, Local 1672B, American Federation of State, County and Municipal Employes, A.F.L.-C.I.O., with the help of William Wilberg, a commissioner from the Wisconsin Employment Relations Commission Madison. The re-employment plan and a 1969 contract were negotiated at the same time.

Under the terms of the agreement all employees who left their posts November 11 were re-hired as interupted service employes. As such they hold the same seniority among themselves as they did when they walked out November 11 and though their re-hiring date is December 2, 1968, they receive credit for past service so that no change will be made in vacation, sick leave or longevity status. However, employes who stayed on the job will, as continuous service employes, hold seniority over interrupted service employes.

During the three-week interim, some new employes were hired as either probationary or temporary employes; these have now been reduced to about 12, who will be retained if they work out and whose seniority will be greater than that of interrupted service employes. While there may be overstaffing in some instances, it will be only temporary because there were several vacancies, several retirements are in the offing, more staff will be needed for the new schools, etc.

The 1969 contract includes a provision for Board payment of 75% of the family health insurance costs such as was also just provided in the new Board contract with the Green Bay Education Assn. The 1969 custodians' contract also adds $5 per month to the longevity payment of employes with more than seven years of service. No other wage or other cost items were included in the contract. The new contract calls for a management rights clause that outlines the right of the Board to make assignments on school needs and employee qualifications. The shift changes announced October 31 will go into effect December 2.

The new agreement has been ratified by the custodians who stayed on the job, those who walked off their jobs, and by the Green Bay Board of Education. Ratification by all parties concerned indicates agreement on terms.

FILE

LAWTON & CATES
TENNEY BUILDING
MADISON, WISCONSIN 53703

JOHN A. LAWTON
RICHARD L. CATES
JOHN H. BOWERS
GEORGE E. AUMOCK
JOHN C. CARLSON

JAMES A. OLSON
ROBERT C. KELLY
BRUCE M. DAVEY
BRUCE F. EHLKE

TELEPHONE
256-9031
AREA CODE 608

February 5, 1969

Comp
Wis 34
8/4/69

Board of Education
Joint School District No. 1
100 North Jefferson St.
Green Bay, Wis.

Re: Grievance relative to the $100.00 payment made to those custodians who worked between November 11, 1968, and December 2, 1968

Gentlemen:

Please be advised that we have been retained by Local 1672B, WCCME, AFSCME, AFL-CIO, to represent them in the processing of the above grievance.

You are hereby notified that our client has chosen to submit the above grievance to arbitration in the manner provided in Step 5 of the Grievance Procedure in the collective bargaining agreement.

We shall inform you of our selection of a member to the Arbitration Board in due course.

We would appreciate all future communication relating to this grievance be directed to our office.

Very truly yours,

JOHN C. CARLSON

JCC:nh
cc: Mr. Edwin Olds, Superintendent of Schools
Mr. Ervin Doepke, City Attorney

GREEN BAY PUBLIC SCHOOLS

GW.35
2/4/69

VIN B. OLDS, Superintendent
MILDRED T. JORGENSON, Secretary

BOARD OF EDUCATION
ADMINISTRATIVE OFFICES
100 N. Jefferson St., Green Bay, Wis. 54301
PHONE: 432-0351

February 10, 1969

Mr. John C. Carlson
Lawton & Cates Law Offices
Tenney Building
Madison, Wisconsin 53703

Dear Mr. Carlson:

Your letter of February 5, 1969 addressed to the Board of Education, Joint School District No. 1 was referred to me in the normal procedural manner.

Your letter refers to Step 5 of the Grievance Procedure in the collective bargaining agreement. Our present agreement does not have this number step, nor does it have provision for an arbitration representative.

Very truly yours,

Donald VanderKelen

DONALD A. VANDER KELEN
Labor Consultant, Board of Education
City of Green Bay

DV/ars

cc: Mr. Edwin Olds, Superintendent of Schools
Mr. Ervin Doepke, City Attorney
Mr. Nick Dallich, Director Buildings and Grounds

GW 1 23
GW. 6/4/69

City Of Green Bay

WISCONSIN
54301

LAW DEPARTMENT
ROOM 300 - CITY HALL

ERVIN L. DOEPKE
City Attorney
RICHARD G. GREENWOOD
Assistant City Attorney

CLARENCE W. NIER
City Attorney Emeritus

June 3, 1969

Mr. Robert J. Oberbeck
Executive Director
Wisconsin Council of County
and Municipal Employees
Room 704
Insurance Building
Madison, Wisconsin 53703

Dear Mr. Oberbeck:

Re: Grievances - Suspension and
Discharge of Local 1672B Officers

The Board of Education desires to follow the grievance procedure in the proposed contract, that is, a meeting with the Negotiating Committee to attempt to settle the above grievances. The Chairman of the Negotiating Committee has called a meeting on Friday, June 6, 10:30 A.M., 4th Floor, City Hall, Green Bay, Wisconsin. If this date or time is not satisfactory, please advise.

Very truly yours,

ERVIN L. DOEPKE
City Attorney

ELD:ch

CC: Supt. Edwin B. Olds
Mr. Don VanderKelen
Mr. James W. Miller
Miss Ann McHugh
Mr. Norbert McHugh
Mr. Louis Hutzler
Mr. Darrell Molzahn

City of Green Bay

WISCONSIN

Comp Exp. No. 20 7/17/69

June 5, 1969

TO: MEMBERS OF THE BOARD OF EDUCATION

Sometime ago I recommended the acceptance of the Labor Contract language. This recommendation was made contingent on legal approval and with the belief that attitudes agreed to at the negotiations would be those that would prevail during the life of any agreement.

On December 2, the last day of the negotiations, we made it clear that retaliation toward any one involved with the situation at the time would constitute a breaking of the agreements. Subsequent actions are well documented on that score. Under guises not too well concealed, a pattern of pressure politics has been added to the discriminatory practices against the minority of the workers group. The latest was a statement by the state director of the union that a name on the black list was that of "a scab worker". This is an inflammatory statement contrary to the spirit of the agreement.

The actions of pressure are well known, including a pattern now well established in politics of attacking through legislative circles. This action, in my opinion, negates the moral agreement reached on December 2, and I cannot recommend acceptance of any agreement with people who adopt this type of tactic. It is one thing to bargain at a table, but it is quite another to be unctuous at the table and then use every retaliatory power available to bring pressure to the bargaining table.

Sincerely,

Donald A. VanderKelen kc

DAV/kc

Donald A. VanderKelen
Labor Relations Consultant